



CHAPTER 17.04

CUSTOMS (CONTROL AND MANAGEMENT) ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

CUSTOMS (CONTROL AND MANAGEMENT) ACT

Act 14 of 1994 .. in force 12 December 1995 (S.R.O. 72/1995)

Amended by Act: 4 of 2000 .. in force 1 August 2000

Amended by S.R.O.: 27/2000 .. in force 17 March 2000

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MONTSERRAT

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CHAPTER 17.04

CUSTOMS (CONTROL AND MANAGEMENT) ACT

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CHAPTER 17.04

CUSTOMS (CONTROL AND MANAGEMENT) ACT

(Acts 14 of 1994, 4 of 2000 and S.R.O. 27/2000)

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO CUSTOMS.

Commencement

[12 December 1995]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Customs (Control and Management) Act.

Interpretation

2. In this Act, unless the context otherwise requires, the following expressions have the following meanings respectively—

“**agent**” means any person appointed an agent under section 18;

“**aircraft**” includes any balloon (whether captive or free), kite, glider, airship, helicopter or other flying machine;

“**airport**” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“**airspace**” means the space between the surface of the airport to a height of 2,000 feet above the level of the airport and within a distance of 1½ nautical miles of its boundaries;

“**approved wharf**” means any place approved under section 13(1);

“**assigned matter**” means any matter in relation to which the Comptroller is for the time being required in pursuance of any enactment to perform any duty;

“**beer**” includes any description of beer and any liquid which on analysis of a sample thereof at any time is found to be of a strength exceeding two degrees proof but not exceeding twenty degrees proof by Sykes Hydrometer;

- “boarding station”** means any place directed to be a boarding station under section 12(2);
- “burden”**, in relation to the weight of a vessel means the net registered tonnage calculated in the manner prescribed by law for ascertaining net registered tonnage;
- “cargo”** means any goods, other than mail, stores, crew member’s effects and passenger’s accompanied baggage, carried on board a vessel or aircraft for a consideration;
- “claimant”**, in relation to proceedings for the condemnation of any thing as being liable to forfeiture, means any person claiming that thing is not liable to forfeiture;
- “coasting aircraft”** and **“coasting vessel”** have the meaning given to them by section 43(1);
- “commander”**, in relation to an aircraft, includes any person having or taking charge or command of that aircraft;
- “common market”** means the Caribbean Common Market;
- “Comptroller”** means the Comptroller of Customs and Excise;
- “container”** includes any bundle or package and any box, cask or other receptacle whatsoever;
- “crew”** means any person employed in duties on board any vessel or aircraft during a voyage or flight, whether or not such a person is on any crew list;
- “customs airport”** means any place prescribed as such or appointed under section 14;
- “Customs Appeal Commissioners”** means those persons appointed to be Customs Appeal Commissioners under section 136;
- “customs area”** means any place approved under section 15(1);
- “customs enactment”** means the provisions of this Act any subsidiary legislation made under it and any other enactment which relates to an assigned matter;
- “customs port”** means any place prescribed as such or appointed under section 12;
- “customs warehouse”** means any place appointed as such under section 63;
- “drawback goods”** means goods in the case of which a claim for drawback has been or is to be made;
- “dutiabale goods”** means goods of a class or description subject to any duty of customs whether or not these goods are in fact chargeable with that duty, and whether or not that duty has been paid thereon;

“duty” means a duty of customs chargeable on goods on importation or exportation;

“entered”—

- (a) in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported means the acceptance and signature by the proper officer of an entry, specification or shipping bill and declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the proper officer by the importer or exporter of all rents and charges due to the Government in respect of the goods; and
- (b) in the case of dutiable goods (except on the entry for warehousing of imported goods) means the payment by the importer or exporter to the proper officer of the full duties thereon, or else, where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law; or
- (c) in the case of goods for which security by bond is required on the exportation, putting on board an aircraft or ship as stores or removal of such goods means the giving of such security; and

“entry”, in relation to the importation or exportation of goods, means any document delivered to the proper officer in accordance with section 26(1) or section 34(1) respectively, and in relation to vessels or aircraft, means any document delivered to the proper officer in accordance with section 35(2);

“entry by bill of sight” means an entry made in accordance with section 27(3);

“examination station” means any place approved under section 16(1);

“export” means to take or cause to be taken out of Montserrat or the territorial sea;

“exporter”, in relation to goods for exportation or for use as stores, includes the shipper of the goods and any person performing in relation to any aircraft functions corresponding with those of a shipper;

“goods” includes stores, baggage and livestock;

“Governor” means Governor in Council;

“import” means to bring or cause to be brought into Montserrat or the territorial sea;

“importer”, in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods;

- “**land**” and “**landing**” in relation to the landing of aircraft, includes alighting on water;
- “**master**”, in relation to a vessel, includes any person having or taking charge or command of the vessel;
- “**Minister**” means the Minister charged with the responsibility of Customs;
- “**occupier**”, in relation to any warehouse, means the person who has given security to the Comptroller in respect of those premises;
- “**officer**” means, subject to section 5(2), any person employed in the Customs Division of the Ministry of Finance, and includes the Comptroller and the Deputy Comptroller;
- “**order**” means order made by the Governor by Rules and Regulations;
- “**owner**”, in relation to a vessel or an aircraft, includes the operator of that vessel or aircraft;
- “**passenger**” means any person other than a crew member travelling on or arriving from any vessel or aircraft;
- “**passenger’s accompanied baggage**” means property, including currency, carried for a passenger on a vessel or aircraft whether in his personal possession or not, so long as it is not carried under a contract of carriage or other similar agreement;
- “**perfect entry**” means any entry made in accordance with section 26 or the warehousing regulations, as the case may be;
- “**police officer**” means any member of the Royal Montserrat Police Force;
- “**port**” means a port appointed by the Governor under section 12 of this Act;
- “**prohibited or restricted goods**” means goods of a class or description of which the importation, exportation or carriage coastwise is for the time being prohibited or restricted under or by virtue of any enactment;
- “**proper**”, in relation to the person by, with or to whom or the place at which any thing is to be done, means the person or place appointed or authorised by the Comptroller in that behalf;
- “**proprietor**”, in relation to any goods, includes any owner, importer, exporter, shipper or other person for the time being possessed of or beneficially interested in those goods;
- “**shipment**” includes loading into an aircraft, and “**shipped**” and cognate expressions shall be construed accordingly;
- “**spirits**” means spirits of any description and includes all liquors mixed with spirits and all mixtures, compounds or preparations made with spirits but does not include methylated spirits or medicated spirits.

“**stores**” means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles or equipment, whether or not for immediate fitting;

“**territorial waters**” means the part of the sea adjacent to the coast of any part of Montserrat which is within 3 geographical miles measured from the low water mark;

“**tobacco**” includes manufactured and unmanufactured tobacco of every description, tobacco stalks and tobacco refill;

“**transit shed**” means any place approved under section 17(1);

“**transit**” or “**transshipment**”, in relation to the entry of goods, means transit through Montserrat or transshipment with a view to the re-exportation of goods in question;

“**vehicle**” means any method of carriage or conveyance and includes any cart and wagon and any trailer attached to any vehicle;

“**vessel**” includes any ship, hovercraft or boat;

“**warehouse**” except in the expression “**customs warehouse**”, means any place of security approved by the Comptroller under section 51(1);

“**warehousing regulations**” means any regulations made under section 52(1).

Time of importation and exportation

3. (1) The provisions of this section shall have effect for the purposes of this Act and of any and other enactment relating to customs.

(2) The time of importation of any goods shall be deemed to be—

(a) in the case of goods brought by sea, the time when the vessel carrying them comes within the limits of the port;

(b) in the case of goods brought by air the time when the aircraft carrying them lands in Montserrat or the time when the goods are unloaded in Montserrat whichever is the earlier:

Provided that, in the case of goods brought by sea of which entry is not required under section 26, the time of importation shall be deemed to be the time when the vessel carrying them came within the limits of the port at which the goods are discharged.

(3) The time of exportation of any goods from Montserrat shall be deemed to be where the goods are exported by sea or air, the time when the goods are shipped for exportation:

Provided that in the case of goods of a class or description with respect to the exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment which are exported by sea or by air, the time of exportation shall be deemed to be the time when the exporting vessel or aircraft departs from the last port or customs

airport at which it is cleared before departing for a destination outside Montserrat.

(4) A vessel shall be deemed to have arrived at or departed from a port at the time when the ship comes within or, as the case may be, leaves the limit of that port.

PART II

ADMINISTRATION

Comptroller of Customs

4. (1) The Comptroller shall, subject to the general control of the Minister, be charged with the duty of collecting and accounting for, and otherwise managing, the revenue of customs.

(2) The Comptroller shall be responsible for the administration of this Act and for any other enactment relating to any assigned matter.

Delegation and appointment by the Comptroller

5. (1) Any act or thing required or authorised by any customs enactment to be done by the Comptroller may be done by any officer authorised generally or specifically in that behalf, in writing or otherwise, by the Comptroller, except that where, for any reason, the post of Comptroller for any time is unfilled, any authorisation given by a previous Comptroller which has not been revoked shall continue in force until revoked by any person subsequently appointed as Comptroller.

(2) Any person appointed by the authority or with the concurrence of the Comptroller (whether previously or subsequently expressed) to perform any act or duty relating to an assigned matter which by law may or is required to be performed by an officer, shall be deemed to be an officer.

(3) Any person deemed by virtue of subsection (2) to be an officer shall have the powers of an officer in relation to the act or duty to be performed by him.

(4) If any officer or other person who has been authorised in writing by the Comptroller to do any thing fails when required to do so by the Comptroller to return to him that written authority, he shall be guilty of an offence and liable to a fine of \$5,000 or imprisonment for twelve months or to both such fine and imprisonment and may be detained.

(5) Where any act is required by an enactment to be done in any particular place it shall be deemed to be done in such place if done in any other place authorised by the Comptroller for that purpose.

(6) The Comptroller may make directions specifying the forms in relation to any assigned matter as he thinks fit.

Obligation of secrecy

6. (1) Subject to subsection (2), any person appointed or employed in carrying out any requirement of or any duty imposed or any power granted by any customs enactment, who—

(a) discloses to an unauthorised person any document, information or confidential instruction which has come into his possession or to his knowledge in the course of his duties; or

(b) permits any unauthorised person to have access to any records in his possession or custody,

shall be guilty of an offence and liable to a fine of \$5,000, or to imprisonment for twelve months, or to both.

(2) Nothing in subsection (1) shall prevent the disclosure by any person of any document, information or confidential instruction where that disclosure is authorised by or under any Act or by the Comptroller.

Times of attendance of officers

7. (1) The days on which and the hours between which offices of Customs are to be opened or officers are to be available for the performance of particular duties shall be such as the Governor may by Order prescribe.

(2) Any request for an officer to perform any duty outside the normal hours of attendance of officers shall be made in writing to the Comptroller who may grant such request if he thinks fit.

(3) The fees payable for the performance of duties outside the hours directed by the Comptroller shall be such as the Governor may by order prescribe.

Assistance to be rendered by the Police

8. (1) It shall be the duty of every police officer to assist in the enforcement of the law relating to any assigned matter.

(2) In relation to any assigned matter every officer shall have the same powers, authorities and privileges as are given by law to police officers.

Officers to disclose interest in certain vessels or aircraft or merchandise

9. (1) Any officer authorised by the Comptroller pursuant to section 5(1) of this Act shall disclose to the Comptroller whether—

- (a) he has any interest in any vessel or aircraft engaged in trade;
or
- (b) he is an agent or acts on behalf of the owner of any vessel or aircraft engaged in trade; or
- (c) he is an importer concerned in the importation of any merchandise for sale.

(2) Any person who fails to comply with the provision of subsection (1) is guilty of an offence and is liable to a fine of \$5,000.

(3) Any officer who fails to comply with any notice given by the Comptroller under subsection (1) is guilty of an offence and is liable on conviction to a fine of \$5,000 or to imprisonment for two years or to both.

Directions

10. Any direction given under any provision of this Act or any subsidiary legislation made under it—

- (a) shall be advertised in the *Gazette*;
- (b) may make different provisions for different circumstances;
- (c) may be varied or revoked by any subsequent direction; and
- (d) shall continue to be in force unless varied or revoked by a subsequent direction.

Application to Government vessels and aircraft

11. The requirements imposed by Parts IV, V and VI shall not apply to the commander of any vessel or aircraft owned by or in the service of the Government or Royal Navy which has on board any goods loaded in any place outside Montserrat.

PART III

CUSTOMS CONTROLLED AREAS

Appointment of Customs Ports

12. (1) The Governor may by Order—

- (a) appoint and name any area in Montserrat as a customs port;
- (b) alter the name or limits of any customs port, and
- (c) revoke the appointment of any customs port, and

(d) impose any condition or restriction, or vary or revoke any condition or restriction imposed, on the use of an area in Montserrat as a customs port.

(2) The Comptroller may direct that any place in a customs port shall be a boarding station for the purpose of the boarding of or disembarkation from vessels by officers.

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Governor under subsection (1) shall be guilty of an offence and liable to a fine of \$5,000.

Approved wharves

13. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose any place in Montserrat for the embarkation and disembarkation of passengers onto and from vessels and for the loading and the unloading of goods or any class or description of goods from vessels, and any place so approved shall be referred to in this Act as an “approved wharf”.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) An officer may at any time enter an approved wharf and inspect it and any goods for the time being at the wharf.

(4) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) shall be guilty of an offence and liable on conviction to a fine of \$5,000.

Customs airports

14. (1) The Governor may by Order—

(a) appoint and name any area in Montserrat as a customs airport;

(b) alter the name or limits of any customs airport;

(c) revoke the appointment of any customs airport; and

(d) impose any condition or restriction, or vary or revoke any condition or restriction imposed, on the use of any area in Montserrat as a customs airport.

(2) Any person in control of any airport shall—

(a) permit an officer at any time to enter upon and inspect that airport and all buildings and goods on it; and

(b) if so required by the Comptroller—

(i) keep a record, in such form and manner and containing such particulars as the Comptroller may direct, of all aircraft arriving at or departing from that airport; and

- (ii) keep that record available and produce it on demand to any officer, together with all other documents kept at the airport which relate to the movement of aircraft; and
 - (iii) permit any officer to make copies of, take extracts from or remove for a reasonable period any such record or document.
- (3) Any person who contravenes or fails to comply with—
- (a) any condition or restriction imposed by the Governor under subsection (1); or
 - (b) any requirement imposed under subsection (2),

shall be guilty of an offence and liable to a fine of \$5,000.

Customs areas

15. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place in Montserrat, not being a customs port, approved wharf or customs airport, as a “customs area”.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) shall be guilty of an offence and liable to a fine of \$5,000.

Examination stations

16. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place as a customs port, customs airport or other customs area, for the loading and unloading of goods and the embarkation and disembarkation of passengers, and any such place so approved shall be referred to in this Act as an “examination station”.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) or (2) is guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater.

(4) Save as authorized by or under any provision of this Act any person who without the consent of the Comptroller enters upon or remains upon any customs port, approved wharf, customs airport, customs area or examination station is guilty of an offence and liable to a fine of \$5,000.

Transit shed

17. (1) The Comptroller may approve for such periods and subject to such conditions and restrictions as he sees fit, places for the deposit of goods imported and not yet cleared from customs charge, including goods not yet reported and entered under this Act, and any place so approved is in this Act referred to as a “transit shed”.

(2) An officer may at any time enter and inspect a transit shed and any goods for the time being in the transit shed.

(3) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(4) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) shall be guilty of an offence and liable on conviction to a fine of \$5,000.

Agents

18. (1) The master of any vessel or the commander of any aircraft may appoint as his agent any person duly authorised to perform any act required by any customs enactment to be performed by a master or a commander, and, if he does so, he shall notify the Comptroller of the name and address of that person and if the Comptroller is satisfied that the person appointed is a fit and proper person to be such an agent, the Comptroller may, subject to such terms and conditions as he sees fit to impose, accept that person as the agent of that vessel or aircraft:

Provided that if no such agent be appointed the owner of the vessel or aircraft if resident or represented in Montserrat shall be deemed to be the agent of the master or commander for all purposes of any assigned matter.

(2) If any agent appointed under subsection (1) wilfully or persistently neglects or refuses to comply with any requirement imposed by any customs enactment on a master of a vessel or a commander of an aircraft, the Comptroller may, by notice in writing, advise any master of that vessel or any commander of that aircraft that he no longer accepts the person appointed as the agent of that vessel or that aircraft, and that person shall upon such notification then cease to be the agent of the master of that vessel or the commander of that aircraft.

(3) Where any person other than the master of a vessel or the commander of an aircraft is required by any customs enactment to perform any act or duty, he may appoint as his agent any other person to perform that act or duty.

(4) Before accepting any request by an agent to act on behalf of a person in relation to an assigned matter, an officer may require that agent to produce to him written authority from the person whose agent he is, certifying that he is so authorised to act.

(5) The Comptroller may if he sees fit require any person appointed to act as an agent under subsection (1) to give security by bond or

otherwise in such form and manner as the Comptroller may direct and such bond—

- (a) shall be taken on behalf of the Government of Montserrat;
- (b) shall be valid notwithstanding that it is entered into by a person under full age; and
- (c) may be cancelled at any time by or by the order of the Comptroller.

Control of movement of uncleared goods

19. (1) The Comptroller may give general or specific directions as to the manner in which, and the conditions and restrictions under which, goods to which this section apply may be moved within the limits of any customs port, approved wharf, customs airport or other customs area, between any of them or between any of them and any other place.

(2) This section applies to—

- (a) all goods chargeable with any duty which has not been paid;
- (b) any goods on which any drawback has been paid; and
- (c) any other goods which have not yet been cleared out of customs charge.

(3) Any directions under subsection (1) may require that goods to which this section applies shall only be moved—

- (a) by persons licensed by the Comptroller for that purpose; or
- (b) in such vessels, aircraft or vehicles or by such other means, as may be approved by the Comptroller for that purpose,

and any such licence or approval may be granted for such periods and be subject to such conditions and restrictions as the Comptroller may see fit to impose and may be revoked at any time by the Comptroller.

(4) Any person contravening or failing to comply with any direction given, or any condition or restriction imposed, or the terms of any licence or approval granted by the Comptroller under subsection (1) shall be guilty of an offence and liable to a fine of \$5,000.

Control of pleasure craft

20. (1) The Governor may make Regulations with respect to the arrival, report and departure of pleasure craft.

(2) In this section, “**pleasure craft**” means—

- (a) any vessel which, at the time of its arrival at a place in Montserrat from abroad, is being used for private recreational purposes only; or

(b) any vessel which the proper officer, after application is made to him in writing, permits to be treated as a pleasure craft.

(3) Regulations under subsection (1) may allow the Comptroller to give such directions as he thinks fit and may provide for the imposition of a fine of an amount not exceeding \$5,000 for any contravention of or failure to comply with any such Regulations or any direction given under such Regulation and for the forfeiture of any vessel or goods involved in any such offence.

PART IV

IMPORTATION

Procedure on arrival of vessels

21. (1) Subject to the provisions of this section and save as the Comptroller may otherwise permit—

- (a) the master of any vessel arriving in the territorial waters of Montserrat from a place outside Montserrat shall not cause or permit that vessel to arrive at any time at any place other than a customs port; and
- (b) no person importing or concerned in importing any goods in any vessel shall bring those goods into Montserrat at any place other than a customs port,

and any master or other person who contravenes or fails to comply with any requirement of this subsection shall be guilty of an offence and liable to a fine of \$5,000, or three times the value of the goods whichever is the greater, and any goods imported in contravention of this subsection shall be liable to forfeiture.

(2) Subsection (1) shall not apply in relation to any vessel which is compelled by accident, stress of weather or other unavoidable cause to arrive at a place other than a customs port, but subject to subsection (3)—

- (a) the master of any such vessel—
 - (i) shall immediately report the arrival to an officer or police officer;
 - (ii) shall not, without the consent of an officer, permit any goods carried on the vessel to be unloaded from, or any passenger or member of the crew to depart from the vicinity of the vessel; and
 - (iii) shall comply with any direction given by an officer in respect of such goods;

(b) no passenger or member of the crew shall, without the consent of an officer or a police officer leave the immediate vicinity of any such vessel.

(3) Any master or any other person who contravenes or fails to comply with any requirement of subsection (2) shall be guilty of an offence and liable to a fine of \$5,000 and any goods imported in contravention of that subsection shall be liable to forfeiture.

(4) Nothing in subsection (2) shall prohibit—

(a) the departure of any passenger or member of the crew from the vicinity of a vessel; or

(b) the removal of goods from a vessel,

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Procedure on arrival of aircraft

22. (1) Subject to the provisions of this section and save as the Comptroller may otherwise permit—

(a) the commander of any aircraft arriving in Montserrat from a place outside Montserrat shall not cause or permit that aircraft to land—

(i) for the first time on its arrival in Montserrat; or

(ii) at any time while it is carrying passengers or goods brought in that aircraft from a place outside Montserrat and not yet cleared,

at any place other than a customs airport; and

(b) no person importing or concerned in importing any goods in any aircraft shall bring those goods into Montserrat at any place other than a customs airport,

and any commander or other person who contravenes or fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater and any goods imported in contravention of this subsection shall be liable to forfeiture.

(2) Subsection (1) shall not apply in relation to any aircraft which is required by or under any enactment relating to air navigation, or is compelled by accident, stress of weather or other unavoidable cause, to land at a place other than a customs airport, but subject to subsection (3)—

(a) the commander of any such aircraft shall—

(i) immediately report the landing to an officer or a police officer and shall on demand produce to him the journey log belonging to the aircraft;

(ii) not without the consent of an officer permit any goods carried on the aircraft to be unloaded from, or any passenger or member of the crew to depart from the vicinity of, the aircraft; and

(iii) comply with any direction given by an officer with respect to such goods; and

(b) no passenger or member of the crew shall without the consent of an officer leave the immediate vicinity of any such aircraft,

and any commander or any other person who contravenes or fails to comply with any requirement of this subsection shall be guilty of an offence and liable to a fine of \$5,000 and any goods imported in contravention of this subsection shall be liable to forfeiture.

(3) Nothing in subsection (2) shall prohibit—

(a) the departure of any passenger or member of the crew from the vicinity of an aircraft; or

(b) the removal of goods from an aircraft,

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Power to make regulations as to arriving vessel and aircraft and the unloading of imported goods

23. (1) The Governor may make regulations—

(a) prescribing the procedure to be followed by a vessel arriving at a customs port and an aircraft arriving at a customs airport;

(b) regulating the unloading, landing, movement and removal of goods on their importation;

(c) empowering the Comptroller to give directions,

and different regulations may be made with respect to vessels and aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the imposition of a fine of an amount not exceeding \$5,000 for any contravention of or failure to comply with any such regulation, or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Notification of arrival of vessels

24. Save as the Comptroller may otherwise permit, the master of every vessel intending to come to Montserrat shall notify the Comptroller of the expected arrival of that vessel not less than 24 hours, before the arrival of that vessel and any master who fails to so notify shall be guilty of an offence and liable to a fine of \$5,000.

Reports inwards

25. (1) The master of every vessel arriving at a customs port—

- (a) from any place outside Montserrat; or
- (b) carrying goods brought in that vessel from a place outside Montserrat and not yet cleared on importation,

shall, within 24 hours of that arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(2) The commander of every aircraft arriving at a customs airport—

- (a) from any place outside Montserrat; or
- (b) carrying goods or passengers taken on board that aircraft at a place outside Montserrat, being goods or passengers either—
 - (i) bound for a destination in Montserrat and not yet cleared at a customs airport; or
 - (ii) bound for a destination outside Montserrat,

shall, upon arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(3) Where any report made under this section is incorrect, the person who made it shall, within 48 hours of the making of it or such longer period as the Comptroller may in any case permit, be allowed to amend it, and provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any customs enactment that person shall not be guilty of any offence and where the error consisted of the omission or incorrect reporting of any goods, those goods shall not be liable to forfeiture.

(4) Where—

- (a) a person by whom a report is required to be made by this section fails to make a report as required, he shall be guilty of an offence and liable to a fine of \$5,000; and
- (b) any goods which appear on any clearance required to be produced by this section do not appear on the report, then, unless the report is amended under subsection (3), the master or commander shall—
 - (i) pay to the Comptroller the duty on such goods; and
 - (ii) be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater.

(5) Any person making a report under this section shall, at the time of making it—

- (a) answer all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer; and
- (b) produce all books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require,

and any person who fails to do so shall be guilty of an offence and liable to a fine of \$5,000.

(6) If, at any time after a vessel or aircraft carrying goods brought in that vessel or aircraft from a place outside of Montserrat arrives within the territorial waters of Montserrat or lands and before a report has been made in accordance with this section—

- (a) bulk is broken; or
- (b) goods are unloaded from or taken on board that vessel or aircraft; or
- (c) any alteration is made in the stowage of any goods carried; or
- (d) any goods are stoved, destroyed or thrown overboard, or any container is opened,

then unless the matter is explained to the satisfaction of the Comptroller, the master or commander shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater and any goods in respect of which the offence was committed shall be liable to forfeiture.

(7) The Comptroller may require any goods reported as stores on board any vessel or aircraft, or any portion of them, to be entered for warehousing under section 26 and for the purposes of this subsection the master or commander shall be deemed to be the importer of those goods.

Entry of goods on importation

26. (1) The importer of any goods, other than goods which are exempt from the requirements of this section, shall—

- (a) in the case of goods imported by air, within seven days of their importation; or
- (b) in the case of goods imported by sea, within fourteen days of their importation,

deliver to the proper officer an entry of those goods, in such form and manner and containing such particulars as the Comptroller may direct.

(2) The following goods are exempt from the requirements of this section—

- (a) fresh fish (including shell fish) taken by Montserrat fishermen and imported by them in the vessels; and
 - (b) passenger's accompanied baggage.
- (3) Subject to subsection (4), goods may be entered under subsection (1)—
- (a) for warehousing, if so eligible; or
 - (b) for home use, if so eligible; or
 - (c) for transshipment; or
 - (d) in such cases as the Comptroller may permit, for temporary retention with a view to subsequent re-exportation.
- (4) The Comptroller may refuse to accept any entry of goods if he is not satisfied that those goods were imported at the time of the delivery of the entry.
- (5) Where, in the case of any goods which are not chargeable with any duty, any entry made under subsection (1) is incorrect, the importer shall, within ten days after the delivery of the entry or such longer period as the Comptroller may in any case permit, be allowed to deliver to the Comptroller a full and accurate account of the goods and provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any customs enactment, the person making the entry shall not be guilty of any offence and the goods which were the subject of the error shall not be liable to forfeiture.
- (6) The Comptroller may, notwithstanding that no entry has been made under subsection (1) permit the delivery to an importer of any bullion, currency notes or coins imported into Montserrat.

Entry by bill of sight

27. (1) Without prejudice to section 26, where on the importation of any goods the importer is unable for want of any document or information to make perfect entry of those goods, he shall make a signed declaration to that effect to the proper officer.

(2) Where a declaration under subsection (1) is made to the proper officer, he shall permit the importer to examine the goods imported.

(3) Where an importer has made a declaration under subsection (1), and submits to the proper officer an entry, not being a perfect entry, in such form and manner and containing such particulars as the Comptroller may direct, and the proper officer is satisfied that the description of the goods for tariff and statistical purposes is correct, and in the case of goods liable to duty according to number, weight, measurement or strength is correct, the proper officer shall, on payment to him of the specified sum, accept that entry as an entry by bill of sight and allow the goods to be delivered for home use.

(4) For the purposes of subsection (3) the specified sum shall be an amount estimated by the proper officer to be the duty payable on such goods, together with such further sum as the proper officer may require, that further sum being not less than 10% of the estimated duty.

(5) If, within one month from the date of making an entry by bill of sight under subsection (3), or such longer time as the Comptroller may in any case permit, the importer shall make a perfect entry, and that perfect entry shall show the amount of duty—

(a) to be less than the specified sum, the Comptroller shall pay the difference to the importer; or

(b) to be more than the specified sum, the importer shall pay the difference to the Comptroller.

(6) Where no perfect entry is made within the time limit laid down by subsection (5), the specified sum paid shall be deemed to be the amount of duty payable on the importation of the goods, and the importer concerned shall no longer take delivery of goods on entry by bill of sight only.

(7) Notwithstanding any other provision of this section, where, at any time after the importation of goods the Comptroller is satisfied that in respect of such goods it is impossible for the importer to make perfect entry in respect of those goods, the Comptroller may, subject to such conditions and restrictions as he may see fit to impose, permit the goods to be entered at a value which, is, in his opinion, the correct value of the goods, and such entry shall be deemed to be perfect entry:

Provided that where any condition or restriction imposed under this subsection is contravened or not complied with, the goods shall become liable to forfeiture.

(Amended by Act 4 of 2000)

Removal of uncleared goods to a customs warehouse

28. (1) Where in the case of any imported goods for which an entry is required—

(a) entry has not been made by the expiration of the relevant period; or

(b) at the expiration of 21 clear days from the relevant date, entry having been made of the goods they have not been unloaded from the importing vessel or aircraft, or in the case of goods which have been unloaded, they have not been produced for examination and clearance; or

(c) the goods are contained in a small package or consignment, then at any time after the relevant date, the proper officer may, subject to subsection (2), cause the goods to be deposited in a customs warehouse.

(2) No goods may be deposited in a customs warehouse if they are—

- (a) of a type prescribed in the First Schedule; or
- (b) in the opinion of the Comptroller, of a perishable nature,

in which case they may be sold.

(3) Subject to subsection (4), in this section—

- (a) **“the relevant period”** means a period of, in the case of goods imported by air, seven days, and in the case of goods imported by sea, fourteen days from the relevant date; and
- (b) **“the relevant date”** means the date when report was made of the importing vessel or aircraft under section 25 or of the goods under section 26 of this Act or, where no such report was made, the date when it should properly have been made.

(4) Where any restriction is placed upon the unloading of goods from any vessel or aircraft by virtue of any enactment relating to the prevention of epidemic or infectious diseases, then in relation to those goods, **“the relevant date”** means the date of the removal of the restriction.

Importation of goods by post

29. (1) Without prejudice to any other provision of this Act—

- (a) all letters arriving in Montserrat from abroad which, in the opinion of the proper officer, could contain other than written or printed material, may be required to be opened in the presence of the Post-Master General or any person authorised by him, in the presence of an officer; and
- (b) all postal packages consigned to a place in Montserrat from abroad may be required to be opened by the proper officer in the presence of the Post-Master General or any person authorised by him in the presence of the importer, and where any goods contained in such a package do not correspond with any declaration of contents made in respect of them, those goods shall be liable to forfeiture.

(2) No goods imported into Montserrat by post shall be allowed to be removed from customs charge until all duty chargeable on them has been paid.

(3) The Governor may make Regulations prescribing the procedure on the importation and exportation of postal packets and may except such importation or exportation from such requirements of such sections of the Act as he thinks fit.

Control of movement of uncleared goods within or between port or airport and other places

30. (1) The Governor may make Regulations as to the manner in which, and the conditions under which, goods to which this section applies, or any

class or description of such goods, may be moved within the limits of any port or customs airport or between any port or customs airport and any other place.

(2) This section applies to goods chargeable with any duty which has not been paid, to drawback goods, and to any other goods which have not been cleared out of charge.

(3) Any Regulations made under subsection (1) may require that any goods to which this section applies shall be moved only—

(a) by persons licensed by the Comptroller for that purpose;

(b) in such ships, aircraft or vehicles or by such other means as may be approved by the Comptroller for that purpose,

and any such licence or approval may be granted for such period and subject to such conditions and restrictions as the Comptroller thinks fit and may be revoked at any time by the Comptroller.

(4) Any person who contravenes or fails to comply with any Regulation made under subsection (1) or condition or restriction imposed, or the terms of any licence granted, by the Comptroller under this section shall be guilty of an offence and liable to a fine of \$5,000.

Control of movement of goods to and from inland clearance depot, etc

31. (1) The Comptroller may by direction impose conditions and restrictions as respects—

(a) the movement of imported goods between the place of importation and a place approved by the Comptroller for the clearance out of charge of such goods, or the place of exportation of such goods; and

(b) the movement of goods intended for export between a place approved by the Comptroller for the examination of such goods or a place designated by the proper officer and the place of exportation.

(2) Any direction under subsection (1) may in particular—

(a) require the goods to be moved within such period and by such route as may be specified by or under the Regulations;

(b) require the goods to be carried in a vehicle or container complying with such requirements and secured in such manner as may be so specified;

(c) prohibit, except in such circumstances as may be so specified, any unloading or loading of the vehicle or container or any interference with its security.

(3) Any documents required to be made or produced as a result of directions made under subsection (1) shall be made or produced in such form and manner and contain such particulars as the Comptroller may

direct; but the Comptroller may relax any requirement that any specific document be made or produced and if he does so may impose substituted requirements.

(4) Any person who contravenes or fails to comply with any direction under subsection (1) or any requirement imposed by or under such direction that person and the person then in charge of the goods shall each be guilty of an offence and liable to a fine of \$5,000 and any goods in respect of which the offence was committed shall be liable to forfeiture.

Goods improperly imported

32. (1) Without prejudice to any other provision of any customs enactment, where—

- (a) except as expressly provided by such an enactment, any imported goods, being goods chargeable on their importation with any duty are, without payment of that duty—
 - (i) unloaded at any port; or
 - (ii) unloaded from any aircraft; or
 - (iii) removed from their place of importation or from any approved wharf, examination station, transit shed or other customs area; or
- (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect to them under or by virtue of any enactment; or
- (c) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof to have been concealed in any manner on board any vessel or aircraft; or
- (d) any goods are imported concealed in a container holding goods of a different description; or
- (e) any imported goods are found, whether before or after delivery, not to correspond with any entry made in respect of them; or
- (f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,

these goods shall, subject to subsection (2), be liable to forfeiture.

(2) Where any goods, the importation of which is for the time being prohibited or restricted under or by virtue of any enactment, are on their importation either—

- (a) reported as intended for exportation in the same vessel or aircraft; or

(b) entered for transshipment; or
(c) entered to be warehoused for exportation or to use as stores,
the Comptroller may, if he sees fit, permit those goods to be dealt with accordingly.

(3) If any person—

(a) imports or causes to be imported any goods—

(i) concealed in a container holding goods of a different description; or

(ii) packed in a manner appearing to be intended to deceive an officer; or

(b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with any entry made in respect of them,

he shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater.

PART V

EXPORTATION

Power to make regulations as to the loading of goods and departing vessels and aircraft

33. (1) The Governor may make Regulations—

(a) regulating the storage, putting alongside, making waterborne and loading of goods intended for export or for use as stores; and

(b) prescribing the procedure to be followed by vessels intending to leave ports and aircraft intending to leave airport for destinations outside Montserrat,

and different regulations may be made with respect to vessels and aircraft.

(2) Without prejudice to the generality of subsection (1), Regulations made under that subsection may provide for the imposition of a fine of an amount not exceeding \$5,000 for any contravention of or failure to comply with any such regulation, or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Entry of goods for exportation

34. (1) Subject to subsection (2), the exporter of any goods, other than passenger's accompanied baggage, shall deliver to the proper officer an entry of those goods in such form and manner and containing such particulars as the Comptroller may direct.

(2) The Comptroller may relax, subject to such conditions and restrictions as he may see fit, to impose all or any of the requirements imposed under subsection (1) in relation to any goods, class or description of goods.

(3) Where, in the case of any goods which are not chargeable with any duty, any entry made under subsection (1) is incorrect, the exporter shall, within ten days after the delivery of the entry or such longer period as the Comptroller may in any case permit, be allowed to deliver to the Comptroller a full and accurate account of the goods and, provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any customs enactment, the person making the entry shall not be guilty of any offence and the goods which were the subject of the error shall not be liable to forfeiture.

(4) Where any goods which have been entered for exportation or for use as stores are not duly loaded on the vessel or aircraft for which they are entered, then unless within 24 hours of the departure of that vessel or aircraft the person who entered them notifies the proper officer of that short loading, those goods shall be liable to forfeiture.

(5) If any goods for which entry is required under subsection (1) are put on board any vessel or aircraft for exportation or for use as stores or are waterborne for such purpose before entry in respect of them has been made, those goods shall be liable to forfeiture and, where the placing on board or making waterborne was done with fraudulent intent, any person concerned in that act with knowledge of that intent shall be guilty of an offence and liable to a fine of \$5,000, or three times the value of the goods, whichever is the greater, or to imprisonment for two years, or to both, and may be arrested.

Entry outwards of vessels

35. (1) Save as the Comptroller may otherwise permit—

(a) before any goods for exportation or for use as stores are loaded on to any vessel; or

(b) where a vessel carrying goods arrives at a port with the intention of proceeding to a destination outside Montserrat,

the master of that vessel shall deliver to the proper officer an entry outwards of that vessel, in such form and containing such particulars as the Comptroller may direct.

(2) Where any entry made under subsection (1) is incorrect, the person who made it shall, within 48 hours of the making of it or such longer period as the Comptroller may in any case permit, be allowed to amend it, and provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any customs enactment, that person shall not be guilty of an offence and any goods which were the subject of the error shall not be liable to forfeiture.

(3) Where—

- (a) a person by whom an entry is required to be made by subsection (1) fails to make an entry as required, he shall be guilty of an offence and liable to a fine of \$5,000; or
- (b) goods are loaded on board any vessel in contravention of subsection (1) those goods shall be liable to forfeiture and the master shall be guilty of an offence and liable to a fine of \$5,000 and, where the loading was done with fraudulent intent, any person concerned in that loading with that intent shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater, or to imprisonment for two years, or to both, and may be arrested.

Stores

36. (1) Upon an application made in such form and manner and containing such particulars as the Comptroller may direct—

- (a) subject to subsection (2), the master of any vessel over 30 tons burden; or
- (b) the commander of any aircraft,

which is about to leave Montserrat for a destination outside Montserrat, the Comptroller may permit, subject to such conditions and restrictions as he may see fit to impose and having regard to the number of persons on board that vessel or aircraft, the likely destination of the voyage or flight, and the stores, if any, remaining on board that vessel or aircraft, such quantity of goods as he considers reasonable to be removed without payment of duty from any warehouse or on drawback, and loaded on to that vessel or aircraft for use as stores during that voyage or flight.

(2) Where the application under subsection (1) is in respect of fuel and lubricants only, that application may be made by the master of any vessel, regardless of its burden.

(3) If any vessel or aircraft, having left Montserrat for a destination outside Montserrat fails to reach that or any other destination outside Montserrat, and returns to Montserrat, and in the opinion of the proper officer the deficiency in the stores of that vessel or aircraft is in excess of the quantity that might reasonably have been consumed having regard to

the period between the departure and the discovery of the deficiency, the master or commander shall—

- (a) pay to the Comptroller the duty on that excess; and
 - (b) be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable,
- whichever is the greater.

Clearance

37. (1) Save as the Comptroller may otherwise permit—

- (a) the master of any vessel intending to depart from any port or other place in Montserrat; and
- (b) the commander of any aircraft intending to depart from any airport or other place in Montserrat,

to a destination outside Montserrat, shall obtain clearance from the proper officer.

(2) Any person applying for clearance under subsection (1) shall—

- (a) deliver to the proper officer an account of all cargo and stores taken on or remaining on board the vessel or aircraft in Montserrat;
- (b) produce all such books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require; and
- (c) answer all questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer.

(3) Where clearance is sought under subsection (1) for any vessel or aircraft which is in ballast, or has on board no goods other than stores, passenger's accompanied baggage or empty containers upon which no freight or profit is earned, the proper officer granting clearance of that vessel or aircraft shall, on the application of the master or commander, clear that vessel or aircraft as in ballast.

(4) Where it appears to any officer that a vessel or aircraft intends or is likely to depart for a destination outside Montserrat without clearance, he may give such instructions and take such steps by way of the detention of that vessel or aircraft as appear to him necessary to prevent that departure.

(5) If any vessel or aircraft required to be cleared under this section departs from any port or airport or any other place in Montserrat for a destination outside Montserrat without a valid clearance, or after clearance calls at any port or airport or any other place in Montserrat without the permission of the proper officer, the master or commander shall, except where the departure or call was caused by accident, stress of weather or

other unavoidable cause, be guilty of an offence and liable to a fine of \$5,000.

(6) If, 24 hours after the granting of a clearance under subsection (1), the vessel cleared has not left the limits of a port in Montserrat, or the aircraft cleared has not taken off for a destination outside Montserrat, that clearance shall become void.

(7) If, where any aircraft is required to obtain clearance from any customs airport under this section, any goods are loaded, or are waterborne for loading, into that aircraft at that airport before application for clearance has been made, the goods shall be liable to forfeiture and where the loading or making waterborne is done with fraudulent intent, any person concerned therein with knowledge of that intent shall be guilty of an offence and liable to a fine of \$5,000 or to three times the duty payable whichever is the greater or to imprisonment for two years or to both and may be arrested.

Power to refuse or demand return of clearance

38. (1) For the purpose of securing the detention of any vessel or aircraft in pursuance of any power or duty conferred or imposed by any customs enactment, or for the purpose of securing compliance with any provision of any such enactment—

- (a) the proper officer may at any time refuse clearance of any vessel or aircraft; and
- (b) where clearance has been granted to a vessel or aircraft, any officer may at any time while the vessel is within the territorial waters of Montserrat, or the aircraft is at a customs airport, demand that any clearance granted be returned to him.

(2) Any demand for the return of a clearance may be made either orally or in writing to the master of the vessel or the commander of the aircraft, and if made in writing may be served—

- (a) by delivering it to him personally; or
- (b) by leaving it at his last known place of abode or business in Montserrat; or
- (c) by leaving it on board the vessel or aircraft with the person appearing to be in charge or command of the vessel or aircraft.

(3) Where a demand for the return of a clearance is made under subsection (2)—

- (a) the clearance shall forthwith become void; and
- (b) if the demand is not complied with, the master or commander shall be guilty of an offence and liable to a fine of \$5,000.

Security for exportation of goods

39. (1) Where—

- (a) warehoused goods; or
- (b) goods on drawback,

are to be exported, the Comptroller may require the exporter to give security in the amount of treble the import duty which would have been chargeable on those goods if they had been imported into Montserrat for home use.

(2) If, within one month of the exportation of the goods referred to in subsection (1) or such longer period as the Comptroller may in any case permit, the exporter does not produce to the Comptroller a certificate, signed by a customs officer in the country to which the goods were exported, certifying that the goods have been imported into that country, or otherwise account for those goods to the satisfaction of the Comptroller, that security referred to in subsection (1) shall be forfeited.

Offences in relation to exportation

40. (1) If any goods which have been loaded or retained on board any vessel or aircraft for exportation or for use as stores are not exported and discharged at a place outside Montserrat or used as stores but are unloaded in Montserrat then unless—

- (a) the unloading was authorised by the proper officer; and
- (b) except where that officer otherwise permits, any duty chargeable and unpaid on those goods is paid and any drawback or other allowance made in respect of those goods is repaid,

the master of the vessel or the commander of the aircraft and any person concerned in the unshipping, re-landing, landing, unloading or carrying of the goods from the vessel or aircraft without such authority, payment or repayment shall be guilty of an offence under this section.

(2) The Comptroller may impose such conditions and restrictions as he may see fit with respect to any goods loaded or retained as mentioned in subsection (1) which are permitted to be unloaded in Montserrat and if any person contravenes or fails to comply with, or is concerned in any contravention or failure to comply with any condition or restriction imposed under this subsection, he shall be guilty of an offence under this section.

(3) If, after a vessel or aircraft has obtained clearance but before it has left Montserrat, it is discovered that any goods cleared for exportation or for use as stores are no longer on board, then, unless those goods have been unloaded with the permission of the proper officer, or are stores which could reasonably have been consumed since the granting of the clearance, the master or the commander shall—

- (a) pay to the Comptroller the duty on that deficiency; and
 - (b) be guilty of an offence under this section.
- (4) If any person—
- (a) exports, causes to be exported or attempts to export any goods—
 - (i) concealed in a container holding goods of a different description; or
 - (ii) packed in a manner appearing to be intended to deceive an officer; or
 - (b) directly or indirectly exports or causes to be exported or entered any goods found not to correspond with entry made in respect of them; or
 - (c) exports or attempts to export any—
 - (i) warehoused goods; or
 - (ii) goods chargeable with any duty which has not been paid which have been transferred from an importing vessel or aircraft; or
 - (iii) goods entitled to drawback on exportation,

he is guilty of an offence under this section.

(5) Where any person is guilty of offence under this section, he shall be liable to a fine of \$5,000, or three times the duty payable whichever is the greater, and any goods in respect of which the offence was committed shall be liable to forfeiture.

Exportation of prohibited or restricted goods

41. (1) If any goods are—
- (a) exported or shipped as stores; or
 - (b) brought to any place in Montserrat for the purpose of being exported or shipped as stores,

and the exportation or shipment is or would be contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods shall be liable to forfeiture and the exporter or intending exporter of the goods and any of his agents concerned in the exportation or shipment or intended exportation or shipment shall be guilty of an offence and shall each be liable to a fine of \$5,000 or three times the duty payable whichever is the greater.

(2) Any person knowingly concerned in exportation or shipment as stores, or in the attempted exportation or shipment as stores, of any goods with intent to evade any such prohibition or restriction as aforesaid shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty

payable whichever is the greater, or to imprisonment for a term not exceeding two years, or to both, and may be arrested.

Power to require information regarding goods of community origin

42. (1) Where on the exportation of any goods from Montserrat there has been furnished for the purpose of any Common Market requirement or practice any certificate or other evidence as to the origin of those goods, or as to payments made or relief from duty allowed in any country or territory then, for the purpose of verifying or investigating that certificate for evidence, the Comptroller or an officer may require the exporter, or any other person appearing to the Comptroller or officer to have been concerned in any way with the goods, or with any goods from which, directly or indirectly, they have been produced or manufactured, or to have been concerned with the obtaining or furnishing of the certificate or evidence—

- (a) to furnish such information, in such form and within such time, as the Comptroller or officer may specify in the requirement; or
- (b) to produce for inspection, and to allow the taking of copies or extracts from, such invoices, bills of lading, books or documents as may be so specified.

(2) Any person who, without reasonable cause, fails to comply with a requirement imposed on him under subsection (1) above shall be guilty of an offence and liable to a fine of \$5,000 or to imprisonment for a period of six months or to both such fine and imprisonment.

PART VI

COASTING TRADE

Definition of coasting trade

43. (1) Subject to the provisions of this Part of the Act, the carriage of goods by sea or air from one part of Montserrat to another shall be deemed to be coasting trade, and any vessel or aircraft whilst so employed shall be deemed to be a coasting vessel or coasting aircraft.

(2) The Governor may by order deem the carriage of any goods or any class or description of goods from any specified place in Montserrat to another specified place not to be coasting trade.

Power to make regulations as to coasting trade

44. (1) The Governor may make regulations—

- (a) regulating the loading, unloading or making waterborne for loading of goods carried, or to be carried, by way of coasting trade; and
- (b) prescribing the procedure to be followed by—
 - (i) coasting vessels on their arrival at or departure from any port; and
 - (ii) coasting aircraft on their arrival at or departure from any airport,

and different regulation may be made in respect of coasting vessels and coasting aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the imposition of a fine of an amount not exceeding \$5,000 for any contravention of or failure to comply with any such regulation or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Limits on coasting trade

45. (1) Subject to subsection (2), no goods not yet entered on importation and no goods for exportation shall be carried by way of coasting trade in any vessel or aircraft used for that purpose.

(2) The Comptroller may permit, subject to such conditions and restrictions as he may see fit to impose—

- (a) any vessel or aircraft to carry goods by way of coasting trade notwithstanding that vessel or aircraft is carrying goods brought therein from a place outside Montserrat and not yet entered on their importation, provided that any vessel or aircraft so permitted to carry such unentered goods by way of coasting trade shall not for the purposes of this Part of the Act be a coasting vessel or a coasting aircraft;
- (b) goods brought by another vessel or aircraft to a place in Montserrat from a place outside Montserrat which are consigned to and intended to be delivered to another place in Montserrat to be transferred before due entry of the goods has been made to a coasting vessel or a coasting aircraft for carriage by way of coasting trade to that other place; and
- (c) any vessel or aircraft which has begun to load goods for exportation or for use as stores on a voyage to a destination outside Montserrat to carry goods by way of coasting trade until that loading has been completed.

(3) If any goods are carried by way of coasting trade in contravention of subsection (1) or any goods are loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Comptroller under subsection (2), those goods shall be liable to

forfeiture and the master of the vessel or the commander of the aircraft shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater.

Clearance of coasting vessels and aircraft

46. (1) Subject to the provisions of this subsection and save as the Comptroller may otherwise permit, no coasting vessel or coasting aircraft shall depart from any port or airport in Montserrat before its master or commander has produced to the proper officer an account of the goods carried in that vessel or aircraft, in such form and manner and containing such particulars as the Comptroller may direct, and such account, when signed by the proper officer, shall be the clearance of that vessel or aircraft.

(2) Where no officer is stationed at the place where an account is required to be produced under subsection (1), the vessel or aircraft may depart from that place whereupon the account shall be produced to an officer at the first place the vessel or aircraft arrives at where an officer is stationed.

(3) On the application of the master of any coasting vessel or the commander of any coasting aircraft, the Comptroller may grant, subject to such conditions and restrictions as he may see fit to impose, a general clearance for that vessel or aircraft, and any goods, class or description of goods to be carried in it.

(4) Any general clearance granted under subsection (3), may be revoked at any time by the proper officer by notice in writing delivered to the master or owner of the vessel or the commander or owner of the aircraft or to any member of the crew on board that vessel or aircraft.

(5) Except as provided by this section, if any coasting vessel or coasting aircraft carrying goods departs from any place in Montserrat without clearance, whether obtained before or after that departure, or in contravention of any condition or restriction imposed by the Comptroller upon a general clearance of that vessel or aircraft under subsection (3), the master of that vessel or the commander of that aircraft shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater and any goods in respect of which the offence was committed shall be liable to forfeiture.

Cargo book

47. (1) The master of every coasting vessel and the commander of every coasting aircraft shall keep a cargo book in such form and manner and containing such particulars as the Comptroller may direct.

(2) The master of a coasting vessel or the commander of a coasting aircraft shall, upon a demand made by the proper officer, produce for inspection the cargo book of that vessel or aircraft.

(3) Subject to subsection (4), where—

- (a) goods have been loaded on to or unloaded from a coasting vessel or a coasting aircraft at a place in Montserrat, then before that vessel or aircraft departs from that place; or
- (b) a coasting vessel or a coasting aircraft arrives at a place in Montserrat where goods are to be unloaded, then before any goods are unloaded,

the master of that vessel or the commander of that aircraft shall produce to the proper officer the cargo book of that vessel or aircraft.

(4) Where no officer is stationed at the place where a cargo book is required to be produced under subsection (3), the vessel or aircraft may depart from that place, or unload, whereupon the cargo book shall be produced to an officer at the first place the vessel or aircraft arrives at where an officer is stationed.

(5) Where the master of a coasting vessel or the commander of a coasting aircraft fails to keep or produce a cargo book as required by this section, he shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater and any goods unloaded in contravention of subsection (3) shall be liable to forfeiture.

Examination of goods in coasting vessels

48. (1) The proper officer may examine any goods carried or to be carried in a coasting vessel—

- (a) at any time while they are on board the vessel; or
- (b) at any place in Montserrat to which the goods have been brought for shipment in, or at which they have been unloaded from, the vessel,

and for that purpose may require any container to be opened or unpacked; and any such opening or unpacking and any repacking shall be done by or at the expense of the proprietor of the goods.

(2) The proper officer—

- (a) may board and search a coasting vessel at any time during its voyage; or
- (b) may at any time require any document which should properly be on board a coasting vessel to be produced or brought to him for examination,

and if the master of the vessel prevents the proper officer from boarding and searching or fails to produce or bring any such document to the proper officer when required, he shall be guilty of an offence and shall be liable to a fine of \$5,000.

Offences in relation to carriage of goods coastwise

49. (1) If in the case of any coasting vessel or coasting aircraft—

- (a) goods are taken on board or unloaded at a place outside Montserrat; or
- (b) the vessel or aircraft touches at some place outside Montserrat, or deviates from its voyage or flight, and the master of the vessel or the commander of the aircraft does not report that fact in writing to the proper officer at the first place in Montserrat which the vessel or aircraft arrives at where an officer is stationed,

then those goods shall be liable to forfeiture and the master or commander shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater.

(2) If any goods—

- (a) are carried by way of a coasting vessel or a coasting aircraft contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment; or
- (b) are brought to any place in Montserrat for the purpose of being so carried or shipped,

then those goods shall be liable to forfeiture and the shipper or intending shipper of the goods shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater.

Power to make regulations relating to small craft

50. (1) The Governor may make regulations with respect to vessels not exceeding fifty tons burden and any such regulations may in particular make provisions as to the purposes for which and the limits within which such vessels may be used; and different provisions may be made by such regulations for different classes or descriptions of such vessels.

(2) Any person who contravenes any regulation made under this section is guilty of an offence and on summary conviction thereof is liable to a fine of \$5,000 and any vessel which is used contrary to any regulation made under this section shall be liable to forfeiture.

PART VII

WAREHOUSING

Approval of warehouse

51. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, places of security for the deposit, keeping and securing of—

- (a) any goods chargeable with a duty of customs without payment of that duty;
- (b) any goods for exportation or use as stores, being goods not eligible for home use;
- (c) any goods permitted by or under this Act to be warehoused on drawback,

and any place so approved shall be referred to in this Act as a “warehouse”.

(2) Without prejudice to the generality of subsection (1), the Comptroller may—

- (a) restrict the goods which may be permitted to be warehoused in a particular warehouse to those goods owned by the occupier of that warehouse; or
- (b) make the approval of any warehouse conditional upon the warehousing of a minimum amount of goods during a specified period, and different amounts may be required in respect of warehouses restricted under (a) and warehouses not so restricted.

(3) If, after the approval of a place of security as a warehouse under subsection (1), the occupier of that warehouse contravenes or fails to comply with any condition or restriction imposed by the Comptroller under that subsection, he shall be guilty of an offence and liable to a fine of \$5,000.

(4) Subject to subsection (5), the Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(5) Where the Comptroller intends to revoke or not to renew any approval of a warehouse given under subsection (1), he shall, not later than three months before the date when the revocation is due to take effect or the approval is due to expire, hereinafter in this section referred to as “the date of cessation”, give notice of his intention in writing, and such notice shall be deemed to have been served on all persons interested in any goods then deposited in that warehouse, or permitted by or under this Act to be so deposited between the date of the giving of the notice and the date of cessation, if addressed to the occupier of, and left at, the warehouse.

(6) If, after the date of cessation or such later date as the Comptroller may in any case permit, uncleared goods remain in a place no longer approved under subsection (1), they may be taken by an officer to a customs warehouse and, without prejudice to any other power of earlier sale provided by this Act, if they are not cleared within one month, may be sold.

Power to make regulations as to warehouses and warehoused goods

52. (1) The Governor may make regulations for the control of the depositing, marking, keeping, securing and treatment of goods in and the removal of goods from warehouses.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for—

- (a) the registration and maintenance of warehouses;
- (b) the payment of licence fees;
- (c) the entering into and maintaining of bonds for the security of duty chargeable on warehoused goods;
- (d) the entering into and maintaining of contracts of insurance for warehoused goods;
- (e) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be carried to or from, deposited in, kept in or removed from warehouses, or made available to their owners for prescribed purposes;
- (f) the attendance of officers at warehouses;
- (g) the production to and making available for inspection by officers of warehoused goods;
- (h) the provision of facilities to officers;
- (i) the records to be kept by occupiers of warehouses;
- (j) the minimum quantities of descriptions of goods which may be deposited in or removed from a warehouse at any one time;
- (k) operations to be carried out on warehoused goods, including the taking of samples;
- (l) goods to be removed from warehouses without payment of duty, subject to such conditions and restrictions as may be determined by or under the regulations;
- (m) goods to be destroyed or abandoned to the Comptroller without payment of duty, in such circumstances and subject to such conditions and restrictions as may be determined by the regulations;
- (n) directions to be given by the Comptroller; and
- (o) the imposition of fines in amounts not exceeding \$5,000 for any contravention of or failure to comply with any regulations, or any direction given or requirement made under any regulation, and for the forfeiture of any goods involved in any such offence,

and may make different provisions for different types of warehouses or parts of warehouses, or for goods of different classes or descriptions, or goods of the same class or description in different circumstances.

Goods not to be warehoused

53. (1) No goods, class or description of goods, prescribed in the First Schedule may be warehoused.

(2) The Governor may, by order delete from, vary or add to the goods, class or description of goods prescribed in the First Schedule.

(3) No damaged goods or goods enclosed in any insecure or otherwise defective container, or in a container from which any portion of the contents have been removed, may be warehoused.

(4) Save as the Comptroller may otherwise permit, and subject to such conditions and restrictions as he may see fit to impose, no warehoused goods may remain warehoused for longer than two years, and any warehoused goods which remain warehoused after such time, may be sold.

(5) The Governor may, by Order, prescribe goods, class or description of goods which may not remain warehoused for a period longer than six months and may by order, delete from vary or add to such goods, class or description of goods.

(6) The Governor may, by Order prescribe any goods, class or description of goods which are required to be warehoused upon their importation.

(7) If any goods are warehoused or fail to be warehoused contrary to the provisions of this section, they shall be liable to forfeiture.

Production of goods in warehouse

54. (1) The occupier of a warehouse shall produce to any officer on request any goods deposited therein which have not been lawfully authorised to be removed therefrom; and if he fails so to produce any goods he shall be guilty of an offence and liable to a fine of \$500 or three times the duty payable whichever is greater.

(2) The occupier of a warehouse shall so stow every container or lot of goods warehoused therein that easy access may be had thereto, and for every container or lot not so stowed he shall be guilty of an offence and liable to a fine of \$500.

Occupier to inspect and show goods for sale

55. (1) Without prejudice to any restrictions or conditions imposed by the occupier of the warehouse, the proprietor of any warehoused goods may with the authority of the proper officer—

- (a)** inspect the goods and their containers and prevent any loss therefrom; and

(b) show the goods for sale.

(2) Where the proper officer requires that he shall be present at any such inspection or showing of goods, he shall so far as is practicable attend at any reasonable time requested, but shall not be obliged to attend for the purposes of this section more than once in any period of 24 hours at the request of the same person or in respect of the same goods.

(3) The Comptroller may allow the proprietor of any warehoused goods to take such samples thereof subject to such conditions, and with or without entry or payment of duty, as he thinks fit.

Entry, marking, etc of goods for warehousing

56. (1) Imported goods which are on importation entered for warehousing shall be deemed to be duly warehoused as from the time when the proper officer certifies that the entry and warehousing of those goods is complete.

(2) Before any other goods are warehoused, the proprietor of the goods shall deliver to the proper officer an entry thereof in such form and manner and containing such particulars as the Comptroller may direct.

(3) Any goods brought to a warehouse for rewarehousing after removal for that purpose from another warehouse shall be dealt with in like manner as if they were goods being warehoused for the first time, except that the two foregoing subsections shall not apply.

(4) Save as permitted by or under this Act, goods shall be warehoused in the containers or lots in which they were first entered for warehousing.

(5) The proprietor of any warehoused goods shall mark the containers or lots thereof in such manner as the proper officer may direct and shall, subject to any further such direction, keep them so marked while they are warehoused, and if any person fails to comply with the provisions of this subsection he shall be guilty of an offence and liable to a fine of \$5,000.

(6) Where without the authority of the proper officer and save as permitted by or under this Act—

(a) any goods are warehoused in containers or lots other than those in which they were entered for warehousing; or

(b) any alteration is made in any goods in warehouse, or in the packing or marking of the containers or lots of any such goods, after the goods have been duly warehoused,

those goods shall be liable to forfeiture.

Re-entry of goods entered for warehousing

57. (1) Subject to subsection (2), any goods which have been entered for warehousing or which have been permitted to be removed from a

warehouse for transport to another warehouse may, at any time before they have been warehoused or re-warehoused—

- (a) be further entered by their proprietor for home use, if so eligible, for exportation or for use as stores, and shall then be dealt with as if they had been so entered from warehouse; or
- (b) be removed for transport to another warehouse approved for the warehousing of such goods, and shall then be dealt with as if they had been duly warehoused.

(2) Where goods are held in containers, no part of those goods shall be further entered or removed under subsection (1) unless that part shall consist of one or more complete containers.

Sorting, separating, packing or repacking of goods warehoused

58. (1) Without prejudice to any other provision of this or any other Act by or under which an operation on warehoused goods is or may be permitted, the Comptroller may, in the case of such goods and subject to such conditions and restrictions as he may from time to time think fit, permit the sorting, separating, packing or repacking of goods in warehouse and the carrying out on warehoused goods of such other operations necessary for the preservation, sale, shipment or disposal of the goods as he sees fit, and may give directions as to the warehouses or the part of any warehouse in which any such operation on goods may be carried out.

(2) Any person who immediately before the commencement of this Act was permitted to carry out an operation of any kind on goods of any class or description in warehouse, not being such an operation as is or may be permitted by or under any such other provision as aforesaid, shall be deemed to have been granted similar permission by the Comptroller under subsection (1).

(3) The Comptroller may at any time revoke or vary any permission granted or deemed to have been granted under this section.

(4) If any person carries out any operation on goods in warehouse otherwise than in accordance with permission granted or deemed to have been granted under this section or otherwise than as permitted by or under such other provision as aforesaid, he shall be guilty of an offence and liable to a fine of \$5,000 and the goods in question shall be liable to forfeiture.

Deficiency in warehoused goods

59. (1) If, at any time after goods have been warehoused and before they have been lawfully removed, all or part of those goods are found to be missing then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the occupier of the warehouse shall—

- (a) pay to the Comptroller—

- (i) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or
- (ii) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods, at the date of the deficiency; and

(b) be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater.

(2) Where any goods have, without payment of duty, been lawfully removed from a warehouse for transport to some other warehouse or to some other place, and all or part of such goods fail to reach that other warehouse or place then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the proprietor of the goods shall—

(a) pay to the Comptroller—

- (i) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or
- (ii) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods, at the date of the discovery of the deficiency; and

(b) be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater.

(3) Subject to subsection (4), no compensation shall be payable by, and no action shall lie against the Comptroller, for any loss or damage caused to any goods while in a warehouse or for any unlawful removal of goods from a warehouse.

(4) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance or connivance of an officer, and that officer is convicted of an offence in relation to that damage, destruction or removal then, except where the occupier of the warehouse or the proprietor of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by such damage, destruction or removal, and notwithstanding any other provision of any customs enactment, no duty shall be payable on the goods by the occupier or the proprietor and any sum paid by way of duty by him before the conviction shall be repaid.

Removal of warehoused goods

60. (1) Before any goods are removed from a warehouse the proprietor of the goods shall deliver to the proper officer an entry thereof in such form and manner and containing such particulars as the Comptroller may direct.

(2) Subject to any provision of this or any other Act or of any instrument made thereunder as to the purposes for which any goods may be

warehoused, goods may be entered under this section for any of the following purposes, that is to say—

- (a) for home use;
- (b) for exportation;
- (c) for use as stores;
- (d) subject to such conditions and restrictions as the Comptroller sees fit to impose, for removal to another warehouse approved for the warehousing of such goods;
- (e) subject to such conditions and restrictions as aforesaid, for removal for such other purposes, to such places and for such periods as the Comptroller may allow.

Duty chargeable on warehoused goods

61. (1) Save as permitted by or under this Act, no goods shall be removed from a warehouse until all duty chargeable on those goods has been paid.

(2) Except as provided by section 65(3) the duties and rates chargeable on warehoused goods shall be those in force with respect to the goods of that class or description at the time of the removal of the goods from the warehouse.

(3) Subject to subsection (4), the amount payable in respect of any duty chargeable on goods shall be calculated in accordance with the account taken of those goods upon their first being warehoused, except that where the goods are—

- (a) spirits;
- (b) wine;
- (c) tobacco;
- (d) hydro carbon oils,

the calculation shall be in accordance with the quantity of such goods ascertained by weight, measure or strength at the time of actual delivery of the goods, unless the Comptroller considers that the difference between the first account and the amount delivered is not explained by natural evaporation or other legitimate cause, in which case the calculation shall be in accordance with that first account.

(4) Where warehoused goods have deteriorated or have been damaged to such a degree that the Comptroller is satisfied that they have become unsaleable, he shall allow such abatement of the duty chargeable on them as, in his opinion, the amount of the deterioration or damage bears to the original value of the goods.

Removal of warehoused goods without payment of duty

62. Without prejudice to any other provision of this Act authorising the removal of goods from warehouse without payment of duty, the Comptroller may permit warehoused goods entered for removal for any purpose other than home use to be removed for that purpose, subject to such conditions and restrictions as he may see fit to impose, without payment of duty, provided that where any condition or restriction imposed under this section is contravened or not complied with, the goods shall be liable to forfeiture.

Provisions as to goods to be deposited in a customs warehouse

63. (1) The following provisions of this section shall have effect in relation to any goods which are deposited in customs warehouse under or by virtue of any provision of this Act.

(2) The Comptroller may appoint any place for the deposit of goods, for the security of those goods and of any duty chargeable on them, and any place so appointed shall be referred to in this Act as a customs warehouse.

(3) Where, in respect of any goods which may or are required to be warehoused, the Comptroller is of the opinion that it would be undesirable or inconvenient to deposit such goods in a customs warehouse, he may deem those goods to be deposited in a customs warehouse, and the provisions of this section shall then apply to those goods as if they were deposited in such a warehouse.

(4) Such rent as may be prescribed by the Governor by Order shall be payable in respect of any goods deposited in a customs warehouse.

(5) The Governor may remit or authorise the refund of any rent payable or paid in respect of any goods deposited in a customs warehouse.

(6) The Comptroller may, in respect of any goods deposited in a customs warehouse, do all such acts as appear to him necessary for the custody and preservation of such goods, and the expenses of so doing shall be payable in addition to any other charges payable in respect of those goods.

(7) If any goods deposited in a customs warehouse are in the opinion of the Comptroller of such a nature as to require special care or treatment, then—

- (a)* the goods shall, in addition to any other charges payable on them, be chargeable with such expenses for the securing, watching and guarding of the goods as the Comptroller may consider necessary;
- (b)* the Comptroller shall not be liable to make good any damage which the goods may sustain; and
- (c)* unless the goods were deposited under section 28(1)(c), if the proprietor of the goods does not within fourteen days from

the date of their deposit clear the goods, the Comptroller may sell the goods.

(8) Save as the Comptroller may otherwise permit, all goods deposited in a (customs) warehouse shall be removed from that warehouse within two months from the date of their deposit, and any goods not so removed may be sold.

(9) Save as permitted by or under this Act, no goods shall be removed from a Customs warehouse until all duty chargeable on those goods, and any charges—

(a) in respect of the removal of the goods to the customs warehouse; and

(b) arising by virtue of subsections (3), (4) and (6),

have been paid and in the case of goods requiring entry and not yet entered, until entry of those goods has been made.

(10) Any officer having custody of goods in a customs warehouse may refuse to permit the goods to be removed until it is shown to his satisfaction that all freight charges due on those goods have been paid.

Offences in relation to warehouses and warehoused goods

64. (1) If any person, except with the authority of the proper officer or for just and sufficient cause, opens any door or lock of a warehouse or a customs warehouse or makes or obtains access to any such warehouse or to any goods in such a warehouse, he shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested.

(2) Where—

(a) any goods which have been entered for warehousing are taken into a warehouse without the authority of, or otherwise than in accordance with any direction given by, the proper officer;

(b) save as permitted by or under this Act, any goods which have been entered for warehousing are removed without being duly warehoused or are otherwise not duly warehoused;

(c) any goods which have been deposited in a warehouse or a customs warehouse are unlawfully removed or are unlawfully loaded into any vessel, aircraft or vehicle for removal or for exportation or for use as stores;

(d) any goods entered for warehousing are concealed, either before or after they have been warehoused; or

(e) any goods which have been lawfully permitted to be removed from a warehouse or a customs warehouse without payment of duty for any purpose are not duly delivered at the

destination to which they should have been taken in accordance with that permission, those goods shall be liable to forfeiture.

(3) Where any person is in any way concerned with the taking, removal, loading concealing or non-delivery of goods, as described in subsection (2), he shall be guilty of an offence and liable to a fine of \$5,000.

(4) Where any person is in any way concerned with the taking, removal, loading, concealing or non-delivery of goods as described in subsection (2), with intent to defraud the Government of any duty chargeable on those goods or to evade any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, he shall be guilty of an offence and liable to a fine of \$10,000, or to three times the duty payable whichever is the greater, or to imprisonment for two years, or to both, and may be arrested.

PART VIII

DUTIES, DRAWBACK, PROHIBITIONS AND RESTRICTIONS

Duties on Imported Goods

Time at which duty chargeable and payable

65. (1) Save as permitted by or under this Act or any other enactment relating to customs, no imported goods shall be delivered or removed on importation until such goods have been duly entered.

(2) Save as otherwise provided by or under this Act, duty shall be chargeable on goods at the rate in force with respect to goods of that class or description—

- (a) where an entry for home use is delivered in respect of goods imported into Montserrat, or an entry is delivered in respect of goods to be exported out of Montserrat, at the time of the delivery of the entry in respect of those goods to the proper officer;
- (b) where an entry is required in respect of the importation of goods into, or the exportation of goods out of Montserrat, but no entry is delivered to any officer, at the time of the importation or exportation of the goods;
- (c) where goods are removed from any vessel, aircraft or transit shed under any bond or other security, at the time of the delivery of the goods;

- (d) where goods are removed from a warehouse for home or other use, then, subject to subsection (3), at the time of the removal of those goods from warehouse; and
- (e) in any other case, at the time of the importation or exportation of the goods.

(3) Where goods are warehoused by virtue of any requirement of section 28(1)(c) or any order made under section 52 then if an entry in respect of those goods is delivered to the proper officer within seven working days of those goods being imported into Montserrat, duty shall be chargeable on those goods at the rate in force at the time of the delivery of the entry in respect of those goods to the proper officer.

Goods to be warehoused without payment of duty

66. Any goods which are on their importation permitted to be entered for warehousing shall be allowed to be warehoused without payment of duty.

Relief from duty of goods entered for transit or transhipment

67. Where goods are entered for transit or transhipment, the Comptroller may allow the goods to be removed for that purpose, subject to such conditions and restrictions as he sees fit, without payment of duty.

Calculation of duty chargeable

68. (1) Without prejudice to any other provision of this Act, any amount due by way of customs duty shall be recoverable as a debt due to the Government.

(2) Any duty, drawback, allowance or rebate the rate of which is expressed by reference to a specified quantity or weight of any goods shall be chargeable or allowable on any fraction of that quantity or weight of the goods, and the amount payable or allowable on any such fraction shall be calculated proportionately:

Provided that the Comptroller may determine the fractions to be taken into account in the case of any weight or quantity.

(3) For the purpose of calculating any amount due from or to any person under any customs enactment by way of duty, drawback, allowance, repayment or rebate, any fraction of a cent in that amount shall be disregarded.

Special provisions

69. (1) If any goods, being goods chargeable with any duty on their importation into or exportation out of Montserrat—

- (a) are imported or exported in any package intended for sale, or of a kind normally sold with those goods, and the package is marked or labelled or commonly sold as, or reputed as containing a specified quantity of those goods, then the

package shall be deemed to contain not less than that specified quantity of those goods;

- (b) are imported or exported in any package intended for sale, or of a kind normally sold with those goods, but the package is not marked or labelled, or commonly sold as, or reputed as containing a specified quantity of those goods, then, unless the importer or exporter is able to satisfy the Comptroller as to the net weight of the goods, the duty shall be calculated on the gross weight of the package and the goods;
- (c) are imported or exported in any package or covering which, in the opinion of the Comptroller—
 - (i) is not the usual or proper package or covering for such goods; or
 - (ii) is designed for separate use, other than as a package or covering for the same or similar goods, subsequent to the importation or exportation,

that package or covering shall be deemed to be a separate article;

- (d) are brought or come into Montserrat as derelict jetsam, flotsam or as a, or part of a wreck, or as droits of Admiralty are sold in Montserrat, they shall be chargeable with the same duty as goods of that class or description would be subject to at the time of their discovery or sale; and
- (e) are imported or exported as a part or an ingredient of another article, duty shall be chargeable on those goods according to the proportion of those goods to other goods used in the manufacture or preparation of the article.

(2) The Governor may by Order specify standard capacities for containers of liquid goods, and where goods liable to duty by liquid volume are, or are reputed to be, sold in container of the size specified in the order, the quantity of goods in that container shall be deemed to be the specified quantity.

Relief from duty on re-imported goods

70. (1) Where any goods, being goods previously entered for home use in Montserrat, are imported into Montserrat, after exportation from Montserrat, and it is shown to the satisfaction of the Comptroller that—

- (i) no duty was chargeable on those goods on any previous importation into Montserrat, or that if any duty was so chargeable, it has been paid;
- (ii) that no drawback has been paid or duty refunded on their exportation or that any drawback so paid or duty so refunded has been repaid; and

- (iii) that the goods have not undergone any process out-side
Montserrat since their exportation,

those goods may be permitted to be imported, subject to such conditions and restrictions as the Comptroller may see fit to impose, without payment of duty.

(2) Where, under any provision of any customs enactment, any goods are, subject to any condition or restriction, relieved from any duty chargeable on them, and that condition or restriction is contravened or not complied with, the duty relieved shall become payable by the person who, but for that relief, would have had to pay that duty, and the goods in respect of which the relief was granted shall become liable to forfeiture.

(3) Any goods relieved from duty by virtue of any provision of any customs enactment shall, upon a demand made by an officer, be produced or otherwise accounted for to him, and if any person fails to produce or account for such goods he shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater, and if any goods not produced or accounted for are subsequently found, they shall be liable to forfeiture.

Abatement of duty

71. (1) Subject to subsection (2), where the Comptroller is satisfied in respect of any imported goods that—

- (a) before or upon their importation they have deteriorated or have been damaged, or that they or some of them have been lost or destroyed, and, in the case of lost goods, that they have not entered or will not enter into home use in Montserrat; and
- (b) the carrier or insurer has made an allowance to the importer in respect of the deterioration, damage, loss or destruction,

the Comptroller shall allow such abatement of the duty chargeable on those goods as, in his opinion, the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which an abatement would be allowable under subsection (1), no repayment of the amount of the abatement shall be made unless the claim is made within six months of the date of the payment of the duty.

Goods imported only temporarily for re-exportation

72. (1) The Governor in Council may by Regulations prescribe that goods imported temporarily with a view to re-exportation be delivered on importation without payment of duty.

(2) Any Regulation made under this section may impose such condition as the Governor considers proper and he may impose different conditions for different classes of goods.

(3) Regulations under subsection (1) may provide for the imposition of a fine of an amount not exceeding \$10,000 for any contravention of or failure to comply with any such Regulations and for the forfeiture of any goods involved in any such offence.

Goods imported other than as cargo, stores, or baggage

73. Any goods brought or coming into Montserrat by sea otherwise than as cargo, stores or baggage carried in a vessel shall be chargeable with the like duty, if any, as would be applicable to those goods if they had been imported as merchandise; and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as the Comptroller may on investigation determine.

Personal reliefs and power to make regulations

74. (1) The Governor may by Order make provisions for conferring on persons entering Montserrat relief from customs duties on goods or classes or descriptions of goods specified in the Order.

(2) Any such relief may be either—

(a) an exemption from duty; or

(b) a sum payable by way of duty less than the full amount due.

(3) Any Order made under subsection (1) above may—

(a) make any relief for which it provides subject to such conditions as the Governor thinks fit including conditions to be complied with after importation of goods to which the relief applies;

(b) make different provision for different cases.

(4) Without prejudice to the generality of subsection (1) an Order made under that subsection may provide for the imposition of a fine of an amount not exceeding \$5,000 or imprisonment not exceeding three years for any contravention of or failure to comply with any provision of the order or any direction given under any such Order, and for the forfeiture of any goods involved in any such offence.

Relief from duty on re-imported goods locally produced

75. Notwithstanding the provisions of section 70 if it is shown to the satisfaction of the Comptroller that any goods manufactured or produced in Montserrat are re-imported into Montserrat after exportation therefrom have not undergone any process outside Montserrat since their exportation the goods may on their re-importation be delivered for home use without payment of duty.

Power of the Governor to refund duty

76. (1) The Governor in Council may remit or authorise the refund of the whole or part of any duty paid or payable by any person in respect of any goods.

(2) Any remission or refund made or authorised to be made under subsection (1) may apply either to specific instances or generally or in respect of specified persons or to persons of a specific class, and may be subject to such conditions and restrictions as the Governor in Council may see fit to impose.

Recovery of amounts due

77. (1) Any amount due and payable to the Comptroller under any customs enactment may be recovered by him in any court of competent jurisdiction.

(2) In any proceedings by the Comptroller for the recovery of any amount due by way of duty, it shall not be competent for the defendant to enter a defence that the amount of duty claimed to be due by the Comptroller, or decided to be due by the Customs Appeal Commissioners, or any court on appeal from those Commissioners, is incorrect.

Valuation

78. (1) Where under any enactment relating to an assigned matter duty is chargeable on goods by reference to their value, that value shall in the case of imported goods be determined in accordance with the provisions of the Second Schedule.

(2) When it is necessary, in determining the value referred to in subsection (1) to establish the equivalent in Eastern Caribbean dollars, the rate of exchange to be used shall in any period be that provided for this purpose by the Comptroller and published by him in the manner he considers appropriate.

Drawback

Extent of drawback

79. (1) Subject to the provisions of this section, where goods are entered—

- (a) for exportation;
- (b) for shipment for use as stores; or
- (c) for warehousing for subsequent exportation or shipment for use as stores,

drawback may be claimed in respect of such proportion of any duty paid on their importation into Montserrat as the Governor may by Order specify.

- (2) No drawback may be claimed in respect of—
- (a) any goods of a value of less than \$270, such value being that at which the goods were originally imported;
 - (b) goods which were imported into Montserrat more than twelve months before the date of the claim for drawback; and
 - (c) goods not in the packages in which they were originally imported into Montserrat, or in the case of bulk goods, where that bulk has been broken,

except that where imported goods are re-exported within six months of their importation by their importer to the same country and to the same person or firm from which they were imported or are entered for shipment for use as stores, the provisions of this subsection shall not apply.

(3) The Governor may, by Order, prescribe any goods, class or description of goods in respect of which no drawback shall be claimable.

Claims for drawback

80. (1) Any claim for drawback shall be made in such form and manner and contain such particulars as the Comptroller may direct.

- (2) No drawback shall be payable—
- (a) unless it is shown to the satisfaction of the Comptroller that all duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;
 - (b) until the person making the claim has furnished the Comptroller with such information and produced to him such books of account or other documents relating to the goods as the Comptroller may demand; and
 - (c) subject to section 81, until all the goods which are the subject of the claim have been exported.

Drawback on goods destroyed or damaged after shipment

81. (1) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods have been destroyed by accident on board the exporting vessel or aircraft, any amount payable by way of drawback on those goods shall be payable as if they had been exported to their destination.

(2) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods have been materially damaged by accident on board the exporting vessel or aircraft, those goods may, with the consent of and in accordance with any conditions and restrictions as may be imposed by the Comptroller, be re-landed or unloaded again or brought back into Montserrat, and—

- (a) if re-entered for home use shall be chargeable with the duty chargeable on the importation of such damaged goods; or
- (b) if abandoned to the Comptroller or destroyed, the importer shall be entitled to such drawback payable on those goods as if they had been duly exported to their destination, and notwithstanding any other provision of any customs enactment, no duty shall be payable on the importation or unloading of those goods.

(3) Any goods in respect of which an offence under subsection (1) above is committed shall be liable to forfeiture; but in the case of a claim for drawback, the Comptroller may, if he sees fit, instead of seizing the goods either refuse to allow any drawback thereon or allow only such drawback as he considers proper.

(4) Without prejudice to the foregoing provisions of this section, if, in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made, it is found that those goods do not correspond with any entry made thereof in connection with that claim, the goods shall be liable to forfeiture and any person by whom any such entry or claim was made shall be guilty of an offence and liable to a fine of \$5,000.

Offences in relation to drawback

82. (1) Where any person obtains or attempts to obtain or does anything whereby there might be obtained by any person any amount by way of drawback in respect of goods for which there is no entitlement, he shall be guilty of an offence and liable to a fine of \$5,000, or three times the amount obtained, attempted to be or which might have been obtained, whichever is the greater.

(2) Where any person, with intent to defraud, obtains or attempts to obtain or does anything whereby there might be obtained by any person any amount by way of drawback in respect of goods for which there is no lawful entitlement, such person shall be guilty of an offence and liable to a fine of \$5,000, or three times the amount obtained, attempted to be or might have been obtained, whichever is the greater, or to imprisonment for two years, or to both, and may be arrested.

Refund where duty paid on goods imported which are exported after undergoing a process of manufacture

83. (1) If it is shown to the satisfaction of the Comptroller that duty has been paid on goods on importation and that such goods have—

- (a) undergone a process of manufacture; and
- (b) have been exported,

the Comptroller shall, subject to such conditions and restrictions as he sees fit to impose, repay to the importer upon a claim being made an amount equivalent to the duty paid on the importation of the goods.

(2) Any such claim shall be made in such form and manner and contain such particulars as the Comptroller may direct.

Prohibitions and Restrictions

General provisions

84. (1) No goods, class or description of goods, prescribed in Part I of the Third Schedule may be imported into Montserrat or exported from Montserrat.

(2) No goods, class or description of goods, prescribed in Part II of the Third Schedule may be imported into Montserrat except in accordance with the conditions and restrictions prescribed by that Part.

(3) The Governor may, by Order—

- (a) delete from, vary or add to the goods, classes or descriptions of goods prescribed in Parts I and II of the Third Schedule;
- (b) prohibit or restrict, subject to such conditions and restrictions as the order may impose, the exportation or carriage coastwise of any goods, class or description of goods; and
- (c) prohibit or restrict, subject to such conditions and restrictions as the order may impose, the importation, exportation or carriage coastwise of any goods, class or description of goods specified in the Order to or from any place in Montserrat so specified.

Prohibition on carriage of spirits tobacco, etc

85. (1) Save where the Comptroller—

- (a) may otherwise permit and subject to such conditions and restrictions as he may see fit to impose; or
- (b) is satisfied that to do so was caused by accident, stress of weather or other unavoidable cause,

no spirits, wines, beer, tobacco, cigars, cigarillos or cigarettes may be imported into or exported out of Montserrat in any vessel of less than thirty tons burden.

(2) Where any spirits, wines, beer, tobacco, cigars, cigarillos or cigarettes are imported into or exported out of Montserrat in contravention of subsection (1), they are liable to forfeiture and any person concerned in that importation or exportation shall be guilty of an offence and liable to a fine of \$5,000 and any vessel carrying such goods in contravention of subsection (1) shall be liable to forfeiture.

PART IX

POWERS

Customs control of persons entering or leaving Montserrat

86. (1) Any person entering Montserrat shall at such place and in such manner as the Comptroller may direct declare anything contained in his baggage or carried with him which—

- (a) he has obtained outside Montserrat; or
- (b) being dutiable goods he has obtained in Montserrat without payment of duty.

(2) Any person entering or leaving Montserrat shall answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him, and shall, if required by the proper officer produce that baggage and any such thing for examination at such place as the Comptroller may direct.

(3) Any person who fails to declare any baggage or thing as required by this section is guilty of an offence and liable on conviction thereof to a fine of \$5,000 or three times the duty payable for value of the thing not declared or the baggage or thing not produced as the case may be whichever is the greater.

(4) Any thing chargeable with any duty which is found concealed or is not declared, and any thing which is being taken into or out of Montserrat contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, shall be liable to forfeiture.

Right of access

87. (1) Without prejudice to any other power contained in this Act, any officer shall have a right of access to, and a power of search to, any part of a customs port, approved wharf, customs airport or other customs area, and any vehicle or goods found at such a place.

(2) The power of search provided by subsection (1) shall include the power to break into or open any building or container which is locked and to which there is no access.

(3) Any goods found concealed at a customs port, approved wharf, customs airport or other customs area, or in any vehicle found at such a place, shall be liable to forfeiture.

Power of boarding

88. (1) At any time while a vessel is in the territorial waters or an aircraft is at any customs airport, any officer may require that vessel or

aircraft to stop and then may board it, and may remain on board it, and may rummage and search any part of it.

(2) Any officer on board any vessel or aircraft in pursuance of subsection (1) may—

- (a) cause any goods to be marked before they are unloaded from that vessel or aircraft; or
- (b) examine any goods in the course of their being unloaded; or
- (c) lock up, seal, mark or otherwise secure any goods carried in that vessel or aircraft or any place or container in which they are so carried; or
- (d) break open any place or container which is locked and to which there is no access; or
- (e) require any document or book which should be on board that vessel or aircraft to be produced to him for examination; and
- (f) require answer to all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put by him,

and if any person on board prevents him from so doing, or refuses to produce any such document or book, or answer any such question, he shall be guilty of an offence and liable to a fine of \$5,000.

(3) Any goods found concealed on board a vessel within the limit of the port or an aircraft at any customs airport, shall be liable to forfeiture.

(4) Where any vessel or aircraft refuses to stop or permit an officer to board when required to do so under subsection (1), the master of that vessel or the commander of that aircraft shall be guilty of an offence and liable to a fine of \$5,000 or to imprisonment for two years or to both and the vessel or aircraft shall be liable to forfeiture.

Power to station an officer on vessel

89. (1) The Comptroller may station an officer on board any vessel at any time while it is within territorial waters and if the master of any vessel on which an officer is stationed by virtue of this section neglects or refuses to provide—

- (a) proper and sufficient food and water, together with reasonable accommodation for such an officer; and
- (b) means of safe access to and egress from that vessel as required by the officer,

he shall be guilty of an offence and liable to a fine of \$5,000.

Power to patrol and moor

90. (1) In relation to any assigned matter, any officer may patrol upon and pass freely either on foot or otherwise along and over and enter any part of Montserrat other than a dwelling house whether or not that place is private property and any such officer so proceeding shall not be liable to any prosecution or any other action for so doing.

(2) Subject to subsection (3) any officer, in command or in charge of any vessel or aircraft engaged in the prevention of smuggling may haul up and moor that vessel, or land that aircraft, at any place in Montserrat.

(3) Nothing in this section shall authorise the entry into or use of a private dwelling house.

Power to examine and take account of goods

91. (1) Without prejudice to any other power conferred by any customs enactment, an officer may examine and take account of any goods—

- (a)* which have been imported; or
- (b)* which are in a warehouse or a customs warehouse; or
- (c)* which have been loaded into or unloaded from any vessel or aircraft at any place in Montserrat; or
- (d)* which have been entered for exportation or for use as stores; or
- (e)* which have been brought to any place in Montserrat for exportation or for use as stores or for shipment for exportation or for use as stores; or
- (f)* in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made, and may for that purpose require any container to be opened or unpacked.

(2) Any examination of goods by an officer under subsection (1) shall be made at such time and place as the officer may direct.

(3) Any bringing of goods to a place directed under subsection (2), and their unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading carrying or landing, and any such treatment to the containers in which the goods are kept, for the purposes of and incidental to the examination or for use as stores, or warehousing shall be done, and any facilities or assistance required for such examination shall be provided by or at the expense of the owner of the goods.

(4) If any—

- (a)* imported goods which an officer has the power under this Act to examine; and

- (b) goods, other than imported goods, which an officer has directed to be brought to a place for the purposes of examination,

are without the authority of the proper officer, removed from customs charge before they have been examined, those goods shall be liable to forfeiture.

Power to require provision of facilities, etc

92. (1) Any person required by the Comptroller under this Act to give security in respect of any premises shall—

- (a) provide and maintain such appliances and afford such other facilities reasonably necessary to enable an officer to take any account or make any examination or search or to perform any other of his duties on the premises of that trader or at the bonded premises or place as the Comptroller may direct;
- (b) keep any appliances so provided in a convenient place approved by the proper officer for that purpose; and
- (c) allow the proper officer at any time to use anything so provided and give him any assistance necessary for the performance of his duties,

and any person who contravenes or fails to comply with any provision of this subsection is guilty of an offence and shall be liable to a penalty of \$5,000.

(2) Any such person as aforesaid shall provide and maintain any fitting required for the purpose of affixing any lock which the proper officer may require to affix to the premises of that trader or person or any part thereof or to any vessel, utensil or other apparatus whatsoever kept thereon, and in default—

- (a) the fittings may be provided or any work necessary for its maintenance may be carried out by the proper officer, and any expenses so incurred shall be paid on demand by the trader or person aforesaid; and
- (b) if the trader or person aforesaid fails to pay those expenses on demand, he shall in addition be guilty of an offence and liable to a penalty of \$5,000.

(3) If any person aforesaid or any servant of his—

- (a) wilfully destroys or damages any such fitting as aforesaid or any lock or key provided for use therewith, or any label or seal placed on any such lock; or
- (b) improperly obtains access to any place or article secured by any such lock; or

- (c) has any such fitting or any article intended to be secured by means thereof so constructed that that intention is defeated,

such persons is guilty of an offence and is liable on conviction thereof to a fine of \$5,000 and may be arrested.

Power to take sample

93. (1) Any officer may at any time take a sample of any goods which he is empowered by any provision of any customs enactment to examine.

(2) Any sample taken by an officer under subsection (1) shall after such examination be returned to the importer unless the goods from which the samples were taken are prohibited or otherwise liable to forfeiture or required by law to be retained.

Power to search premises

94. (1) Where an officer has reasonable grounds to believe that anything which is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment he may after being authorised by the Comptroller in writing so to do accompanied with a Police Officer—

- (a) enter that building or place at any time, and search for, seize, detain or remove any thing which appears to him may be liable to forfeiture; and
- (b) so far as is reasonably necessary for the purpose of such entry, search, detain or removal, break open any door, window or container and force and remove any other impediment or obstruction; and
- (c) search for and remove any invoice, bill of loading or any other document or book relating to any assigned matter.

(2) Without prejudice to the power conferred by subsection (1) or to any other power conferred by this Act, if a magistrate is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect as aforesaid, he may by warrant under his hand given on any day authorise that officer or any other person named in the warrant to enter and search any building or place so named.

(3) Where in the case of any entry, search, seizure, detention or removal, damage to property is caused and no goods which are liable to forfeiture are found, the owner of the building, place or goods damaged shall be entitled to recover from the Comptroller the costs of making good that damage.

Power to search vehicles

95. (1) Without prejudice to any other power contained in or under this Act, where an officer has reasonable grounds to believe that any vehicle is

carrying any thing which is liable to forfeiture, he may stop and search that vehicle.

(2) If, when so required under subsection (1) the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched, he shall be guilty of an offence and liable to a fine of \$5,000.

Power to search persons

96. (1) Where an officer has reasonable grounds to believe that any person has in his possession any thing which is liable to forfeiture, he may stop and search that person and any article which that person has with him.

(2) No female shall be searched in pursuance of subsection (1) except by a female.

(3) Any person to be searched in pursuance of subsection (1) may require to be taken before a Magistrate or the senior of the officer or other person concerned who shall consider the grounds for suspicion and direct whether or not the search is to take place.

Power to arrest

97. (1) Subject to subsection (2) any officer or a police officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be arrested under any customs enactment.

(2) No person may be arrested for an offence by virtue of subsection (1) more than five years after the commission of that offence, except that where, for any reason, it was not practicable to arrest that person at the time of the commission of the offence, he may be arrested and proceeded against as if the offence had been committed at the time when he was arrested.

(3) Where by virtue of subsection (1) any person is arrested by a police officer, that police officer shall give notice of that arrest to the Comptroller.

Power to carry and use firearms

98. (1) If the Governor in Council is satisfied on representation made by the Comptroller that it is necessary for the protection of any officer duly engaged in the performance of any duty that he should carry firearms, he may grant permission to the Comptroller of Customs to apply to the Commissioner of Police for the issue of a licence to such officer to carry firearms.

(2) Any officer may use any firearm authorised to be carried by subsection (1) where such use is necessary for—

- (a) the preservation of life;
- (b) the summoning of a vessel in accordance with the provisions of section 88(4);

- (c) to fire upon a vessel which has failed to bring to when summoned.

Power to summon vessel to bring to

99. (1) If any part of the cargo of a vessel is thrown overboard or is stowed or destroyed to prevent seizure—

- (a) while the vessel is within the territorial waters of Montserrat; or
- (b) where the vessel, having been properly summoned to bring to by any vessel in the service of the Government of Montserrat, fails so to do and chase is given, at any time during the chase,

the vessel shall be liable to forfeiture.

(2) If, save for just and sufficient cause, any vessel which is liable to forfeiture or examination under or by virtue of any provision of this Act does not bring to when summoned to do so the master of the vessel shall be guilty of an offence and shall be liable to a fine of \$5,000.

(3) Where any vessel liable to forfeiture or examination as aforesaid has failed to bring to when summoned to do so and chase has been given thereto by any vessel in the service of the Government of Montserrat or of the Royal Navy and after the commander of that vessel has caused a gun to be fired as a signal, the vessel still fails to bring to, the vessel may be fired upon.

(4) For the purposes of this section, a vessel shall be deemed to have been properly summoned to bring to—

- (a) if the vessel making the summons did so by means of an international signal code or two shots are fired in the air or any other recognised means and while flying her proper ensign; and
- (b) if at the time the summons was made the vessel was within the territorial waters of Montserrat.

Power to pay rewards

100. The Comptroller may, with the approval of the Governor, (provided that such approval need not be sought for a sum not exceeding \$500) reward any person, including an officer, for any service in relation to an assigned matter including any information relating to any offence against the customs enactment or for assisting in the recovery of any fine or penalty which appears to him to merit reward.

Power to require attendance

101. (1) Where under any provision of any customs enactment the master of any vessel or the commander of any aircraft is required to answer any

question put to him by the Comptroller or an officer, the Comptroller or the officer may, at any time while the vessel is at any port or the aircraft is at any customs airport, require the master or commander or, with the consent of the Comptroller or the officer, a senior officer of that vessel or aircraft, to attend before him at his office.

(2) Any master or commander who fails to comply with any requirement of subsection (1) shall be guilty of an offence and liable to a fine of \$5,000.

Power to require information and the production of evidence

102.(1) Any officer may, at any time within five years of the importation, exportation or carriage coastwise of any goods, require any person—

- (a) concerned in that importation, exportation or carriage coastwise; or
- (b) concerned in the carriage, unloading, landing or loading of such goods,

to furnish to him in such form and manner as he may require, any information relating to the goods, and to produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods.

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided by virtue of subsection (1) or Parts III to VI and VIII, in respect of any goods imported, exported or carried coastwise, or in respect of which any repayment of duty is claimed.

(3) Any person who with reasonable cause, fails to comply with a requirement imposed on him under subsection (1) or (2) shall be guilty of an offence and liable to a fine of \$5,000.

Power to require security

103.(1) Without prejudice to any express requirement as to security provided for by any other customs enactment, the Comptroller may, if he sees fit, require any person to give security by bond or otherwise in such form and manner as the Comptroller may direct for the observance of any condition or restriction in connection with any assigned matter.

- (2) Any bond taken for the purposes of any assigned matter—
- (a) shall be taken on behalf of the Government of Montserrat;
 - (b) shall be valid notwithstanding that it is entered into a person under full age; and
 - (c) may be cancelled at any time by or by the order of the Comptroller.

PART X

OFFENCES

Unlawful assumption of character of Comptroller or officer

104. If, for the purpose of obtaining admission to any aircraft, vessel or building or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, any person falsely assumes the name, designation or character of the Comptroller, or an officer or of any other person appointed by the Comptroller to discharge any duty relating to an assigned matter, he may be arrested and, in addition to any other proceedings which may be taken against him, he shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both.

Bribery and collusion

105.(1) Any person required under this Act or any customs enactment to discharge any duty relating to an assigned matter—

- (a) directly or indirectly asks for or takes in connection with any of his duties any payment or other reward whatsoever, whether pecuniary or other, or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or
- (b) enters into or acquiesces in any agreement to do abstain from doing, permit, conceal or connive at any act or thing whereby the Government of Montserrat is or may be defrauded or which is otherwise unlawful, being an act or thing relating to an assigned matter,

he shall be guilty of an offence and liable to a fine of \$10,000 or to imprisonment for two years, or to both, and may be arrested.

(2) If any person—

- (a) directly or indirectly offers or gives to the Comptroller, to an officer or to any other person required to discharge any duty relating to an assigned matter any payment or other reward whatsoever, whether pecuniary or other, or any promise or security for any such payment or reward; or
- (b) proposes or enters into any agreement with the Comptroller, officer or other person so appointed,

in order to induce him to do, abstain from doing, permit conceal or connive at any act or thing whereby the Government of Montserrat is or may be defrauded or which is otherwise unlawful, being an act or thing relating to an assigned matter, or otherwise to take any course contrary to his duty, he

shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested.

Offences against officers

106.(1) Any person who—

- (a) obstructs, hinders, molests or assaults any officer or person engaged in the performance of an duty or the exercise of any power, imposed or conferred to him by any customs enactment, or any person acting in his aid; or
- (b) does anything which impedes or is calculated to impede the carrying out of any search for any thing which is liable to forfeiture or the detention, seizure or removal of any such thing; or
- (c) rescues, damages or destroys any thing which is liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture;
- (d) prevents the arrest of any person under any customs enactment or rescues any person so arrested; or
- (e) attempts to do any such act specified in subsections (a), (b), (c) and (d) or aids and abets any person doing such an act,

shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested.

(2) Any person who fire upon, maims or wounds any officer in the performance of his duty shall be guilty of an offence and liable to a fine of \$10,000 or to imprisonment for ten years or to both and may be arrested.

(3) If any person uses abusive, offensive or threatening language to any officer engaged in the performance of any duty or the exercise of any power imposed or conferred on him by any customs enactment, he shall be guilty of an offence and liable to a fine of \$5,000.

Carrying away officers

107.(1) If any vessel or aircraft departs from Montserrat carrying on board without his consent any officer, the master of that vessel or the commander of that aircraft shall be guilty of an offence and liable to a fine of \$5,000.

(2) Without prejudice to the liability of any person under subsection (1), the amount of any expenses incurred by the Comptroller or the Government of Montserrat by reason of the carrying away of any officer may be recovered from that person or from the owner of the vessel or aircraft.

Interfering with Customs vessels

108.(1) If any person, save for just and sufficient cause, interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark or anything which is being used by an officer in the performance of his duty, he shall be guilty of an offence and liable to a fine of \$5,000 or to imprisonment for two years or to both.

(2) If any person fires upon any vessel, aircraft or vehicle being used by an officer in the performance of his duty, he shall be guilty of an offence and liable to imprisonment for ten years and may be arrested.

Signalling to smugglers

109.(1) In this section references to a “**prohibited signal**” or a “**prohibited message**” are references to a signal or message connected with the smuggling or intended smuggling of goods into or out of Montserrat.

(2) If any person by any means sends any prohibited signal or transmits any prohibited message from any place in Montserrat or from any vessel or aircraft, for the information of any person in any vessel or aircraft, he shall be guilty of an offence and liable to a fine of \$5,000, or to imprisonment for twelve months, or to both, and may be arrested, and any equipment or apparatus used for the sending of the signal or message shall be liable to forfeiture.

(3) Subsection (2) applies whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at that time in smuggling.

(4) If, in any proceedings against a person under subsection (2), any question arises as to whether any signal or message was prohibited signal or a prohibited message, the burden of proof shall lie on the defendant.

(5) If any officer or police officer has reasonable grounds to believe that a prohibited signal or a prohibited message is being or is about to be made or transmitted from any vessel, aircraft, vehicle, or other place in Montserrat he board or enter that vessel, aircraft, vehicle, building or other place in Montserrat and take such steps as are reasonably necessary to stop or prevent the sending of that signal or message.

Communicating with arriving vessels

110. Save as the Comptroller may otherwise permit, if any person on board any vessel, communicates in any way with any vessel arriving from a place outside Montserrat before that arriving vessel has been cleared by an officer, he shall be guilty of an offence and liable to a fine of \$5,000 or to imprisonment for two years or to both and may be arrested.

Offering goods for sale as smuggled goods

111. If any person offers for sale any goods as having been imported without payment of duty, or as having been otherwise unlawfully imported, then, whether or not those goods were in fact chargeable with duty or were so imported, the goods shall be liable to forfeiture and the person so offering them for sale shall be guilty of an offence and liable to a fine of \$5,000, or three times the duty payable whichever is the greater, or to imprisonment for two years or to both and may be arrested.

Special penalty where offender armed or disguised

112. If any person concerned in the movement, carrying or concealment of goods—

- (a) contrary to or for the purpose of contravening any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to the importation, exportation or carriage coastwise of those goods; or
- (b) without payment having been made of or security given for any duty payable on those goods,

and, while so concerned, is armed with any offensive weapon or disguised in any way, and if any person so armed or disguised is found in Montserrat in possession of anything which is liable to forfeiture under any customs enactment, he shall be guilty of an offence and liable to imprisonment for five years, and may be arrested.

Untrue declarations

113. (1) If any person—

- (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter, which is untrue in a material particular, he shall be guilty of an offence and liable to a fine of \$5,000, and any goods in relation to which the document or statement was made shall be liable to forfeiture.

(2) If any person knowingly or recklessly—

- (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of an assigned matter, which is untrue in a material particular, he shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested, and any goods in relation to which the document or statement was made shall be liable to forfeiture.

(3) Where by reason of any such document or statement as is mentioned in subsection (1) or (2), the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or of the overpayment shall be payable immediately to the Comptroller, and may be recovered accordingly.

Counterfeiting documents

114. If any person—

- (a) counterfeits or falsifies any document which is required by any customs enactment relating to an assigned matter or which is used in the transaction of any business relating to an assigned matter;
- (b) knowingly accepts, receives or uses any such document so counterfeited or falsified;
- (c) alters any such document after it has been officially issued; or
- (d) counterfeits any seal, signature, initials or other mark of, or used by, any officer for the verification of such a document or for any other purpose relating to an assigned matter,

he shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested.

False scales

115.(1) If any person required by any customs enactment to provide scales, provides, uses or permits to be used any scales which do not give true reading, he shall be guilty of an offence and liable to a fine of \$5,000.

(2) Where any article is or is to be weighed, counted, gauged or measured for the purpose of the taking of an account or the making of an examination by an officer, then if—

- (a) any such person as is mentioned in subsection (1); or
- (b) any person by whom or on whose behalf the article is or is to be weighed, counted, gauged or measured,

does anything whereby the officer is or might be prevented from, or hindered or deceived in, taking a true account or making a due examination, he shall be guilty of an offence and liable to a fine of \$5,000.

(3) In this section, “scales” includes weights, measures and weighing or measuring machines or instruments.

Fraudulent evasion

116.(1) Without prejudice to any other provision of any customs enactment, if any person—

- (a) knowingly acquires possession of any of the following goods, that is to say—
 - (i) goods which have been unlawfully removed from a warehouse or a customs warehouse; or
 - (ii) goods which are chargeable with any duty which has not been paid; or
 - (iii) goods with respect to the importation, exportation or carriage coastwise of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or
- (b) is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with any such goods,

and does so with fraudulent intent, he shall be guilty of an offence and liable to a fine of \$10,000, or to three times the duty payable whichever is the greater, or to imprisonment for two years, or to both, and may be arrested, and any goods in respect of which the offence was committed shall be liable to forfeiture.

(2) Without prejudice to any other provision of any customs enactment, if any person is, in relation to any goods, in any way concerned in a fraudulent evasion or attempt at evasion—

- (a) of any duty chargeable on those goods; or
- (b) of any prohibition or restriction for the time being in force with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any enactment,

and is so concerned with fraudulent intent, he shall be guilty of an offence and liable to a fine of \$10,000, or to three times the duty payable whichever is the greater, or to imprisonment for two years, or to both, and may be arrested, and any goods in respect of which the offence was committed shall be liable to forfeiture.

Removing locks, seals or marks

117.(1) Where, in pursuance of any power conferred by any customs enactment, any lock, seal or mark is used to secure or, identify any goods, or place or container in which goods are kept then if, without the authority of the proper officer—

- (a) that lock, seal or mark is unlawfully and prematurely removed or tampered with by any person; or
- (b) at any time before the lock, seal or mark is lawfully removed, any of the goods are wilfully removed by any person,

that person and the person then in charge of the goods shall be guilty of an offence and liable to a fine of \$5,000 or three times the duty payable whichever is the greater and the goods shall be liable to forfeiture.

(2) For the purposes of subsection (1), goods in a vessel or aircraft shall be deemed to be in the charge of the master of that vessel or the commander of that aircraft.

PART XI

LEGAL PROCEEDINGS, FORFEITURE AND SALE OF GOODS

General Provisions as to Legal Proceedings

Institution of proceedings

118.(1) Subject to the provisions of subsection (3), no proceedings for an offence under any customs enactment, or for condemnation under the Fourth Schedule, shall be commenced unless such proceedings or condemnation are authorised in writing by the Comptroller.

(2) Any proceedings for an offence under this Act or under any other Customs enactment shall be commenced in the name of the Comptroller.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of subsection (2), those proceedings may be continued by any officer authorised in that behalf by the Comptroller.

(4) Notwithstanding anything in the foregoing provisions of this section, where any person has been arrested for any offence for which he is liable to be arrested under any customs enactment any court before which he is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Comptroller or have not been commenced in his name.

Time limit on proceedings

119.Notwithstanding anything in any other written law, proceedings for an offence under the customs enactment may be commenced within six months from the time when the matter of a complaint or charge arose or the date upon which evidence sufficient to justify proceedings first came to the actual or constructive knowledge of the Comptroller.

Place of trial

120. Proceedings for an offence under any customs enactment may be commenced—

- (a) in any court having jurisdiction in the place—
 - (i) where the offence was committed; or
 - (ii) where the person charged with the offence resides or is found; or
 - (iii) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; and
- (b) if any thing was detained or seized in connection with that offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited.

Persons who may conduct proceedings

121. Any proceedings before a Magistrate's Court in relation to an assigned matter may be conducted by an officer or any other person authorised in that behalf by the Comptroller.

Service of process

122.(1) Any summons or other process issued for the purpose of any customs enactment shall be deemed to have been duly served on a person—

- (a) if delivered to him personally; or
- (b) if left at his last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) if left on board any vessel or aircraft of which he is the owner.

(2) Any summons, notice, order or other document issued for the purposes of any proceedings under any customs enactment, or of an appeal from a decision of any court in any such proceedings, may be served by an officer.

Incidental provisions

123.(1) Where liability for an offence under any customs enactment is incurred by two or more persons jointly, those persons shall each be liable for the full amount of any fine and may be proceeded against either jointly or severally as the Comptroller may think fit.

(2) Where an offence under a customs enactment, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of,

any director, manager, secretary or other similar officer of that body corporate, or any person purporting to act in such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) Where a penalty for an offence under a customs enactment is required to be fixed by reference to the value of any goods, that value shall be taken as the price those goods might reasonably be expected to have fetched, after payment of any duty chargeable on them, if they had been sold in the open market at or about the date of the commission of the offence for which the penalty is imposed.

(4) Where, in any proceedings for an offence under a customs enactment, any question arises as to the duty or rate chargeable on any imported or exported goods, or goods which were intended to be exported, and it is not possible to ascertain the relevant time specified in section 65 the duty or rate shall be determined as if the goods had been imported, exported or brought to a place for exportation at the time when the proceedings were commenced.

(5) In any proceedings for an offence under a customs enactment, or for condemnation under the Fourth Schedule, the fact that security has been given for payment of any duty or compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted, shall not be a defence.

Power to compound offences, mitigation

124.(1) The Comptroller may—

- (a) compound any offence;
- (b) stay the proceedings for condemnation of anything as being forfeited under this Act; or
- (c) restore subject to such conditions if any, anything seized under this Act.

(2) In any proceedings for an offence under this Act any court by which the matter is considered may mitigate any pecuniary penalty as it sees fit.

Proof of certain documents

125.(1) Any document purporting to be signed by the Governor, the Comptroller, or their order, or by any person with their authority, shall, until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may, in any proceedings under any customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where any book or other document is required to be kept by virtue of a customs enactment, the production of that book or other document, or a copy of it certified as a true copy by an officer, shall in any

proceedings under such an enactment be sufficient evidence of the matters contained therein unless the contrary be proved.

Proof of certain matters other than documents

126.(1) An averment in any process in proceedings under a customs enactment—

- (a) that those proceedings were instituted by order of the Comptroller;
- (b) that any person is or was the Governor, the Comptroller, an officer or a police officer;
- (c) that any person is or was appointed or authorised by the Comptroller to discharge, or was engaged by the order or with the concurrence of the Comptroller in the discharge of, any duty;
- (d) that the Comptroller is or is not satisfied as to any matter as to which he is required by any customs enactment to be satisfied;
- (e) that any place is within the limits of a customs port, approved wharf, customs airport or other customs area, or within the territorial waters of Montserrat;
- (f) that any goods thrown overboard, stoved or destroyed were so dealt with in order to prevent or avoid their seizure; or
- (g) that a ship is a Montserrat ship, shall, until the contrary is proved, be sufficient evidence of the matter in question.

(2) Where in any proceedings relating to an assigned matter instituted by the Comptroller, an officer or a police officer or against the Comptroller, any question arises as to the place from which goods have been brought or as to whether or not—

- (a) any duty has been paid or secured in respect of any goods;
- (b) any goods or other thing are of the description or nature alleged in the information, writ or other process;
- (c) any goods have been lawfully imported or lawfully unloaded from any vessel or aircraft;
- (d) any goods have been lawfully loaded into any vessel or aircraft or lawfully exported or were lawfully waterborne;
- (e) any goods were lawfully brought to any place for the purpose of being loaded into any vessel or craft, or exported; or
- (f) any goods are or were subject to any prohibition or restriction on their importation, exportation or carriage coastwise,

the burden of proof shall be upon the other party to the proceedings.

Detention of persons about to leave Montserrat

127. Where any person has by any action rendered himself liable to be prosecuted for any offence under any customs enactment, and the Comptroller is of the opinion that person is about to leave Montserrat without that matter being dealt with, the Comptroller may apply to a Magistrate for a warrant for the arrest of that person.

Actions brought or against officers

128. No action, suit or other proceedings shall be instituted personally against any officer in respect of any act done by him in pursuance of any power granted to or duty imposed on him by a customs enactment.

Forfeiture

Detention, seizure and condemnation of goods

129.(1) Any thing which is liable to forfeiture under customs enactment may be seized or detained by any officer or police officer.

(2) Where any thing which is liable to forfeiture is seized or detained by a police officer, that thing shall be delivered to the Comptroller within seven days unless—

- (a)* such delivery is not practicable; or
- (b)* that thing is or may be required for use in connection with any proceedings to be brought otherwise than under a customs enactment.

(3) Where, by virtue of subsection (2), anything seized or detained by a police officer is not delivered up to the Comptroller within seven days notice in writing of the seizure or detention, containing full details of the thing seized or detained, shall be given to the Comptroller, and any officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.

(4) The Fourth Schedule shall have effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.

(5) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, or deemed to have been condemned as forfeited, the Comptroller may at any time he sees fit—

- (a)* deliver it up to any claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's

opinion represents the value of the thing, including any duty chargeable thereon which has not been paid; or

- (b) if the thing seized is a living creature or is in the Comptroller's opinion of a perishable nature, sell or destroy it.

(6) The restoration, sale or destruction under subsection (5) of any thing seized as liable to forfeiture shall be without prejudice to any right of appeal against its seizure.

Forfeiture of vessels etc., used in connection with goods liable to forfeiture

130.(1) Where any thing has become liable to forfeiture under any customs enactment—

- (a) any vessel, aircraft, vehicle, animal, container (including baggage) or any other thing which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at the time when it was so liable or for the purpose of the commission of the offence for which it later became so liable; and
- (b) any other thing mixed, packed or found with the thing so liable,

shall also be liable to forfeiture.

(2) Where—

- (a) any vessel is or has been within the territorial waters of Montserrat; or
- (b) any aircraft is or has been at any place whether on land or water in Montserrat; or
- (c) any vehicle is or has been within the limits of any customs port, approved wharf, customs airport or other customs area,

while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, that vessel, aircraft or vehicle shall be liable to forfeiture.

(3) If, at any time while a vessel is within the territorial waters of Montserrat, any part of its cargo is thrown overboard or is stoved or destroyed to prevent seizure, that vessel shall be liable to forfeiture.

(4) Where any cargo, has been imported into Montserrat upon any vessel or aircraft and any part of that cargo is afterwards found to be missing then, if the master of the vessel or the commander of the aircraft is unable to account for that missing cargo to the satisfaction of the Comptroller, that vessel or aircraft shall be liable to forfeiture.

(5) Where any vessel, aircraft, vehicle or animal has become liable to forfeiture, all tackle, apparel or furniture belonging to it shall also be liable to forfeiture.

Special provisions as to forfeiture of larger vessels

131.(1) Notwithstanding any other provision of any customs enactment, no vessel of 250 or more tons burden shall be liable to forfeiture unless—

- (a) the offence in respect of or in connection with which the forfeiture is claimed—
 - (i) was substantially the object of the voyage during which the offence was committed; or
 - (ii) was committed while the vessel was under chase after refusing to stop when required to do so; or
- (b) the vessel was constructed, adapted, altered or fitted in any manner solely for the purpose of concealing goods; or
- (c) subsection (3) applies.

(2) Where any vessel of 250 or more tons burden would, but for subsection (1), be liable to forfeiture for or in connection with an offence under any customs enactment and, in the opinion of the Comptroller, a responsible officer of the vessel is implicated by his own act or by neglect in that offence, the Comptroller shall have the power to impose a penalty on that vessel in any sum not exceeding \$5,000, and until that fine is paid, he may withhold clearance of that vessel.

(3) Where any vessel is liable to a fine under subsection (2), but the Comptroller is not satisfied that such a fine is adequate in relation to the offence committed, the Comptroller may take proceedings under the Fourth Schedule for the condemnation as forfeited of that vessel in any sum not exceeding \$10,000 as the court thinks fit.

(4) Where condemnation proceedings are taken under subsection (3), the Comptroller may require such sum as he thinks fit, not exceeding \$10,000, to be deposited with him and until that sum is so deposited, he may withhold clearance of that vessel.

(5) No claim shall lie against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(6) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

(7) For the purposes of this section—

- (a) “**responsible officer**”, in relation to any vessel, means the master, mate or chief engineer of the vessel, and in the case of a vessel carrying a passenger certificate, the purser or chief steward, and, in the case of a vessel manned wholly or

partly by Asiatic seamen, the serang or other leading Asiatic officer of the vessel; and

- (b) without prejudice to any other grounds upon which a responsible officer of any vessel may be held to be implicated by neglect, he may be so liable if goods not owned by any member of the crew are discovered in any place under that officer's supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the vessel or subsequently.

Protection of officers seizing or detaining goods

132.(1) Where, in any proceedings for the condemnation of any thing seized as liable to forfeiture under any customs enactment, judgement is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure.

(2) Where any proceedings are brought against the Government of Montserrat or the Comptroller on account of the seizure or detention of any thing as liable to forfeiture, and judgement is given for the plaintiff or prosecutor, then if either—

- (a) a certificate relating to the seizure has been granted under subsection (1); or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs.

(3) Nothing in subsection (2) shall affect any right of any person for the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction of it.

(4) Any certificate under subsection (1) may be proved by the production of either the original certificate or a certified copy of it, purporting to be signed by an officer of the court by which it was granted.

Sale of Goods

Sale of goods condemned as forfeited

133.(1) Any thing condemned as forfeited by virtue of the Fourth Schedule, or deemed to have been condemned as forfeited by that Schedule, shall, unless a prohibited or restricted article be sold by public auction.

(2) Any auction under this section shall be advertised in a newspaper and where practicable in the *Gazette* not less than seven days before it is due to take place.

(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(4) None of the following shall be permitted to bid for any thing at an auction under this section—

(a) an officer;

(b) any person having or having had any interest in the thing being auctioned,

and any person who makes a bid in contravention of this subsection shall be guilty of an offence and liable to a fine of \$5,000.

(5) All monies arising from the sale of any thing at auction under this section shall be used to pay—

(a) in the first place, all the charges of and incidental to the seizure of that thing and any proceedings for the condemnation of it; and

(b) secondly, all the charges of and incidental to the sale, warehousing and carriage of that thing; and

(c) finally, any duty payable on that thing, and any residue shall be paid by the Comptroller into the Consolidated Fund.

(6) The value for duty of any thing sold at auction under this section shall be the price realised less the included duty.

(7) The Comptroller shall offer for sale goods which are of a perishable nature in the manner which appears to him appropriate to realise the value for such goods.

(8) Any thing not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited, shall be destroyed or otherwise disposed of as the Comptroller may direct.

(9) Nothing in this section shall prevent the Comptroller from authorising the withholding from sale of any thing condemned or deemed to be condemned as forfeited, and its use by an officer, where such retention and use would assist that officer in the performance of his duty.

Sale of goods not condemned

134.(1) Where any thing, not being a thing condemned or deemed to be condemned as forfeited, may by virtue of any customs enactment be sold, it shall, unless it is of a perishable nature, be offered for sale at a public auction.

(2) Any auction under this section shall be advertised in a newspaper and if practicable in the *Gazette* not less than seven days before it is due to take place.

(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at any auction under this section.

(4) All monies arising from the sale of any thing at an auction under this section shall be used to pay—

(a) in the first place, any duty payable on that thing; and

(b) secondly, all the charges of and incidental to the sale, warehousing and carriage of that thing,

and any residue shall, if application is made within six months of the sale, be paid over to any person who satisfies the Comptroller that he was the owner of that thing at the time of its sale.

(5) The value for duty of any thing sold at an auction under this section shall be the price realised less the duty.

(6) The Comptroller shall offer for sale any thing which is of a perishable nature in the manner which appears to him, appropriate to realise the value for such thing.

(7) Any thing which cannot be sold at an auction under this section or by the Comptroller under subsection (6) shall be destroyed or otherwise disposed of as the Comptroller may direct.

(8) The provisions of this section shall apply to the sale of any vessel or aircraft which may be sold by virtue of section 131 except that the sum ordered to be paid under that section and other charges incidental to the seizure of such vessel or aircraft shall be satisfied out of the monies arising from the sale before any amount is repaid to the person who was the owner of the vessel or aircraft.

(9) Any sale by auction under this section may take place at the same time and place as a sale under section 134.

PART XII

DETERMINATION OF DISPUTES

Appeal to the Comptroller

135.(1) Where any amount of duty demanded by an officer is disputed by the person required to pay that amount, that person shall pay that amount but then may, at any time before the expiration of three months from the date of payment, require the Comptroller, by a notice in writing under this subsection, to reconsider the amount of duty demanded.

(2) A notice under subsection (1) shall state the grounds for disputing the amount of duty demanded.

(3) The Comptroller, after reconsidering the amount of duty demanded and taking into account the grounds contained in the notice, may increase, decrease or confirm that amount, and shall notify the person who paid the amount demanded of his decision.

Customs Appeal Commissioners

136.(1) The Governor shall from time to time appoint such persons as he sees fit to be Customs Appeal Commissioners (hereafter in this Part referred to as “Commissioners”).

(2) The Governor shall appoint one of the Commissioners to be Chairman and another to be Deputy Chairman, and any hearing of the Commissioners shall be before either the Chairman or the Deputy Chairman and two other Commissioners.

(3) The Governor shall appoint a Secretary to the Commissioners and any notice or correspondence, other than decisions of the Commissioners themselves, may be issued and signed by or on behalf of the Secretary.

(4) Every decision of the Commissioners shall be given under the signature of the Chairman presiding at that hearing.

(5) At any hearing of the Commissioners, in the event of a division of opinion, the decision of the majority shall prevail.

(6) At any hearing of the Commissioners, they shall have—

- (a) power to summon to attend that hearing any person who in their opinion is or might be able to give evidence relevant to the matter before that hearing;
- (b) power, where any person is summoned to attend a hearing or is voluntarily at that hearing, to examine that person on oath or otherwise;
- (c) power to require any person to produce any books or other documents which are in his custody or under his control and which they consider may contain evidence relevant to the matter before the hearing;
- (d) all powers of a subordinate court with respect to the enforcement of attendance of witnesses, the hearing of evidence on oath and punishment for contempt;
- (e) power to admit or reject any evidence adduced, notwithstanding that evidence would or would not be admissible in any court;
- (f) power to postpone or adjourn that hearing, and
- (g) a duty to determine the procedure to be followed at that hearing.

Appeal to the Customs Appeal Commissioners

137.(1) Any person notified of a decision under section 135 (hereinafter in this Part referred to as the appellant) may, subject to subsection (2), appeal against that decision to the Commissioners by serving a notice of appeal on the Secretary to them and the Comptroller within 30 days of the notification or such longer period as the Commissioners may permit.

(2) No appeal may be made under subsection (1) unless the amount notified as the duty due by the decision of the Comptroller has been paid.

(3) A notice of appeal under subsection (1) shall be in writing and shall state—

- (a) the date of the decision of the Comptroller which is appealed against;
- (b) the name and address of the person to whom the decision appealed against was sent;
- (c) the amount of duty in dispute; and
- (d) the grounds for claiming that the amount of duty in dispute is not due and payable.

(4) At least 30 days or such shorter time as the parties may agree before the date fixed for the hearing of an appeal, the Secretary to the Commissioners shall, by notice in writing, advise the Comptroller and the appellant of the time at which, the date on which, and the place where the appeal is set down for hearing.

(5) The hearing of any appeal under subsection (1) shall be in public unless the Chairman presiding at that hearing shall otherwise direct.

(6) At any hearing of appeal under subsection (1)—

- (a) the Comptroller and the appellant shall be entitled to appear in person or by representation;
- (b) the burden of proof on any matter shall lie with the appellant; and
- (c) the Comptroller and the appellant shall bear their own costs unless the Commissioners, for special cause, otherwise direct.

(7) On the hearing of an appeal, the Commissioners may increase, decrease or confirm the amount of duty due and shall notify the Comptroller and the appellant of their decision.

(8) Any decision of the Commissioners under this section shall be published in the *Gazette*, except that where a direction has been given under subsection (5) that the hearing of the appeal shall be in private, such details of the decision shall be omitted as the Chairman considers necessary to preserve the privacy that the private hearing was considered necessary to protect.

Right of further appeal

138.(1) The Comptroller or the appellant may appeal to the High Court against any decision of the Commissioners which involves a question of law, including a question of mixed fact and law.

(2) The Comptroller or the appellant may appeal to the Court of Appeal against any decision of the High Court, being a decision on an appeal from the Commissioners, which involves a question of law, including a question of mixed fact and law.

(3) On an appeal to the High Court or the Court of Appeal under this section, that court shall have the power to—

- (a)* increase, decrease or confirm the amount of duty due;
- (b)* make any such other order as it thinks fit; and
- (c)* make such order as to costs as it thinks fit.

Payment of duty after appeal

139.(1) Subject to subsection (2), where a decision of Commissioners, the High Court or the Court of Appeal on an appeal under this Part is—

- (a)* that the amount of duty due should be increased, the appellant shall pay the amount of the increase to the Comptroller; and
- (b)* that the amount of duty should be decreased, the Comptroller shall pay the amount of the decrease to the appellant,

within 30 days of the decision.

(2) Where the decision referred to in subsection (1) is that of the Commissioners or the High Court, no amount shall be payable if, within the 30 day time limit provided by that subsection, an appeal against that decision is lodged with the High Court or the Court of Appeal, as the case may be.

PART XIII

MISCELLANEOUS

Power to make Regulations

140. Without prejudice to any other power enabling the Governor to make Regulations the Governor may make such Regulations as he considers necessary in relation to any assigned matter and such Regulations may provide for the Comptroller to give directions, the imposition of a fine or penalty not exceeding \$5,000 and for the forfeiture of any goods, vessels or aircraft.

Amendments to Schedules

141. The Governor may by Order published in the *Gazette* amend the Schedules.

FIRST SCHEDULE

(Sections 28(2) and 51(1))

GOODS NOT PERMITTED TO BE WAREHOUSED ON IMPORTATION

Aircraft
Animals, living
Arms, Ammunition and Explosives
Asphalt, all kinds including pitch and tar
Bottles, empty in bags
Bricks and tiles
Cattle and other animal foods (other than in tins packed in cases)
Cement and cement products
Cheese
Chemicals
Film, cinematographic
Fireworks
Fish (other than in tins packed in cases)
Fruit and nuts (other than in cases)
Grain, flour, pulse and preparations thereof (other than in tins packed in cases)
Hay and chaff
Manures
Matches
Meats (other than in tins packed in cases)
Metals
Molasses
Nuts and kernels, other than food
Oil—
 edible
 Fuel
 other kinds, including essential, medicinal and perfumed oils
Salt
Seeds for expressing oil therefrom
Ships, boats, and launches
Starch
Stones and slates
Sugar, (unless packed in tins or cases)
Vegetables (other than in tins packed in cases)
Wood and timber—

lumber
shingles
shooks, staves and headings.

And goods which in the opinion of the Comptroller are likely to cause damage to other goods stored in the same warehouse.

SECOND SCHEDULE

(Section 78(1))
(Amended by S.R.O. 27/2000)

VALUE OF IMPORTED GOODS

1. (1) In this Schedule—
 - (a) **“customs value of imported goods”** means the value of goods for the purpose of levying *ad valorem* duties of customs on imported goods;
 - (b) **“produced”** includes grown, manufactured and mined;
 - (c) **“identical goods”** means goods produced in the same country which are the same in all aspects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;
 - (d) **“similar goods”** means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in the determining goods are similar;
 - (e) **“identical goods”** and **“similar goods”**, as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 8(1)(b)(iv) because such elements were undertaken in Montserrat;
 - (f) **“goods of the same class or kind”** means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
- (2) For the purpose of this Schedule—
 - (a) persons shall be deemed to be related only if—
 - (i) they are officers or directors of one another’s business;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stocks or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person; or

- (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;
- (c) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, or the other shall be deemed to be related only if they fall within the criteria of sub-paragraph 2(a);
- (d) the term “**person**” means a natural or legal person;
- (e) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the 45 days immediately before or the 45 days immediately after, the day on which the other event occurs.
2. (1) The customs value of imported goods shall be determined under paragraph 3 whenever the conditions prescribed therein are fulfilled.
- (2) Where such value cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, inclusive, to the first such paragraph under which it can be determined, subject to the provision that, where the importer requests it and the (Comptroller) agrees, the order of application of paragraphs 6 and 7 shall be reserved.
- (3) Except as provided for in sub-paragraph (2), it is only when the customs value of imported goods cannot be determined under a particular paragraph that the provisions of the next paragraph in the sequence established by sub-paragraph (2) can be applied.
- (4) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, inclusive, it shall—
- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
 - (b) to the greatest extent possible, be based on previously determined customs values; and
 - (c) make use of the methods of valuation laid down in paragraphs 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.
- (5) No customs value shall be determined under sub-paragraph (4) on the basis of—
- (a) the selling price in Montserrat of goods produced in Montserrat;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;

- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with paragraph 7;
- (e) the price of the goods for export to a country other than Montserrat;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this paragraph shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Montserrat, adjusted in accordance with paragraph 8, and in appropriate cases paragraph 9, provided—

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which—
 - (i) are imposed or required by law or by the public authorities in Montserrat;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under sub-paragraph (2).

- (2) (a) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (i), the fact that the buyer and the seller are related within the meaning of paragraph 1 shall not in itself be grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price, if, in the light of information provided by the importer otherwise, the Comptroller has grounds for considering that the relationship influenced the price, he shall communicate the grounds to the importer who shall be given a reasonable opportunity to respond.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time—

- (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Montserrat;
- (ii) the customs value of identical or similar goods, as determined under paragraph 6;
- (iii) the customs value of identical or similar goods, as determined under paragraph 7;

in applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

- (c) The tests set forth in sub-paragraph 2(b) shall be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under that subparagraph.
- (3) (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller the imported goods.

Payments may be made directly or indirectly, need not necessarily take the form of a transfer of money, and shall include—

- (i) all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
 - (ii) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.
- (b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in paragraph 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

(4) The customs value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods—

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation or imported goods such as industrial plant, machinery or equipment;
- (b) customs duties and other taxes payable in Montserrat by reason of the importation or sale of the goods;
- (c) the cost of transport after importation;
- (d) landing charges.

(5) The fact that goods which are the subject of sale are entered for home use within Montserrat shall be regarded as adequate indication that they were sold for export to Montserrat. This indication shall also apply where successive sale of goods have taken place before valuation. Where such successive sales have taken place each price resulting from them may be used as a basis for valuation.

4. (1) (a) The customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to Montserrat and exported at or about the same time as the goods being valued.

(b) In applying this paragraph, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.

(2) Where the costs and charges referred to in paragraph 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) In applying this paragraph—

(a) if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods;

(b) a transaction value for goods produced by different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued; and

(c) a condition for adjustment because of different commercial levels or different quantities shall be such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this paragraph, the transaction value of identical imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in sub-paragraph (1)(b) and (2) of this paragraph.

5. (1) (a) The customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to Montserrat and exported at or about the same time as the goods being valued.

(b) In applying this paragraph, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the

customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to different quantities shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.

(2) Where the costs and charges referred to in paragraph 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(3) In applying this paragraph—

- (a) if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this paragraph, the transaction value of similar imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in sub-paragraph (1)(b) and (2) of this paragraph.

6. (1) (a) If the imported goods or identical or similar imported goods are sold in Montserrat in the condition as imported, the customs value of the imported goods, determined under this paragraph, shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deduction for the following—
- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in Montserrat of imported goods of the class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within Montserrat; and
 - (iii) the customs duties and other taxes payable in Montserrat by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this paragraph shall, subject otherwise to the provisions of sub-paragraph (1)(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Montserrat in the condition as imported at the earliest date after the importation of goods being valued but before the expiration of 90 days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Montserrat in the condition as imported, then, if the Comptroller so decides, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Montserrat who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in sub-paragraph (1)(a). Where this method of valuation is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations.

(3) In this paragraph, the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

(4) Any sale in Montserrat to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 8(1)(b), shall not be taken into account in establishing the unit price for the purposes of this paragraph.

(5) For the purposes of sub-paragraph (1)(a)(i)—

(a) profit and general expenses shall be taken as a whole. The figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales of the imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer;

(b) in determining either the commissions or the additions usually made for profit and general expenses, the question whether certain goods are of the same class or kind as other goods shall be determined on a case-by case basis by reference to the circumstances involved. In doing this, sales for which the necessary information can be provided of the narrowest group or range or imported goods of the same class or kind as the goods being valued should be examined; and

- (c) **“goods of the same class or kind”** includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

(6) For the purposes of sub-paragraph (1)(b), the **“earliest date”** shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

7. (1) The Customs value of imported goods determined under this paragraph shall be based on a computed value which shall consist of the sum of—

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Montserrat.
- (c) the cost or value of the items referred to in paragraph 8(1)(e).

(2) The cost or value of materials and fabrication referred to in sub-paragraph (1)(a) above shall include the cost of elements specified in paragraph 8(1)(a)(ii) and (iii). It shall also include the value, duly apportioned, of any element specified in paragraph 8(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 8(1)(b)(iv) which are undertaken in Montserrat shall be included only to the extent that such elements are charged to the producer. No cost or value of an element referred to in this sub-paragraph shall be counted more than once in determining the computed value.

(3) The **“cost or value”** referred to in sub-paragraph (1)(a) shall be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It shall be based upon the commercial accounts of the producer, provided that these accounts are consistent with the generally accepted accounting principle applied in the country where the goods are produced.

(4) For the purpose of sub-paragraph (1)(b)—

- (a) the **“amount for profit and general expenses”** shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Montserrat;
- (b) if the producer’s own figures for profit and general expenses are not consistent with those usually reflected in sales of the goods of the same class or kind referred to in sub-paragraph (4)(a) the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods;
- (c) **“goods of the same class or kind”** means goods imported from the same country as the goods being valued;

- (d) whether goods are “**of the same class or kind**” as other goods shall be determined on a case by case basis with reference to the circumstances involved. In doing this, sales for export to Montserrat of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided should be examined;
- (e) the “general expenses” referred to cover the direct and indirect cost of producing and selling the goods for export which are not included under sub-paragraph (1)(a).

8. (1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods—

- (a) the following, to the extent that they are incurred by the buyer that are not included in the price actually paid or payable for the goods—
 - (i) commission and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable—
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Montserrat and necessary for the production of the imported goods;
- (c) royalties and licence fees, which among other things, may include payments in respect of patents, trademarks and copyrights, related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

- (e) (i) the cost of transport of the imported goods to the port or place of importation;
- (ii) loading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (iii) the cost of insurance.

(2) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data; and if such do not exist a transaction value shall not be determined under the provisions of paragraph 3.

(4) In this paragraph, the term “**buying commissions**” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

(5) Notwithstanding sub-paragraph (1)(c) of this paragraph—

- (a) charges for the right to reproduce the imported goods in Montserrat shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
- (b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to Montserrat of the goods.

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3 provided that—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement has been made in writing;
- (c) where required by the Comptroller, the buyer can demonstrate—
 - (i) such goods are actually sold at the price declared as the price actually paid or payable; and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(2) The provisions of sub-paragraph (1) shall apply regardless of whether the finance is provided by the seller, a bank or another person; and it shall also apply, *mutatis mutandis*, where customs value is determined under a method other than the transaction value.

THIRD SCHEDULE

(Section 84(1) and (2))

PROHIBITIONS AND RESTRICTIONS

PART I

PROHIBITED GOODS

1. Firearms having a disguised appearance and in particular pistols made to resemble stylographic pens and pencils.
2. Pipes or other utensils for use in connection with the smoking or preparation for smoking of opium, cannabis, cocaine or any other drug the use of which is prohibited by any other law.
3.
 - (a) nuclear related goods;
 - (b) chemical and biological agents and precursors;
 - (c) items related to missile technology;
 - (d) military, nuclear and industrial “dual use” goods.
4. Goods, the importation of which is prohibited by any other law of Montserrat.
5. Goods, the importation of which would be inconsistent with the provisions of any Treaty, Conventions or Protocol extended to Montserrat.

PART II

RESTRICTED GOODS

The importation of any mechanical game, device, or appliance, which, in the opinion of the Comptroller of Customs and Excise, is such as can be used to play at any game of chance for money or money’s worth except expressly authorised by the Comptroller of Customs and Excise.

The importation of tear gas and any ingredient which may produce what is commonly known as tear gas or tear smoke except with the written authority of the Commissioner of Police.

The importation of any article which bears a design in imitation of any currency or bank note or coin in current use in Montserrat or elsewhere, except expressly authorised by the Comptroller of Customs and Excise.

The importation of any herb or plant or any part of any herb or plant for use as medicine or drug by man or animals, or which may be used as medicine or drug by

man or animals, except authorised by the Chief Medical Officer or the Chief Veterinary Officer.

The importation of arms and ammunition except with the written permission of the Commissioner of Police.

The importation of goods the importation of which is regulated by any other law except in accordance with the provision of such law.

FOURTH SCHEDULE

(Section 129(4))

FORFEITURE

1. (1) The Comptroller shall, except as provided by sub-paragraph (2), give notice of the seizure of anything seized as liable to forfeiture and of the grounds of that seizure to any person who to his knowledge was the owner of, or one of the owners of, that thing at the time of its seizure.

(2) Notice shall not be required to be given under sub-paragraph (1) if the seizure was made in the presence of—

- (a) the person whose offence or suspected offence occasioned the seizure;
- (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
- (c) in the case of any thing seized in a vessel or aircraft, the master or commander of that vessel or aircraft.

2. Notice under paragraph (1) shall be given in writing and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally;
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business, or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address in Montserrat, or his address is unknown, by publication of the notice of seizure in the *Gazette*.

3. Where any person, who was at the time of the seizure of any thing the owner or one of the owners of it, claims that it was not liable to forfeiture, he shall, within one month of the date of service of the notice of seizure or, where no such notice was served, within one month of the date of seizure, give notice of his claim in writing to the Comptroller at any customs office.

4. Any notice under paragraph 3 shall specify the name and address of the claimant and, in the case of a claimant who is outside Montserrat, shall specify the name and address of a solicitor in Montserrat who is authorised to accept service and act on behalf of the claimant, and service upon a solicitor so specified shall be deemed to be proper service upon the claimant.

5. If, on the expiration of the relevant period under paragraph 3 for the giving of a notice of claim, no such notice has been given to the Comptroller, or where such notice is given, that notice does not comply with any requirement of paragraph 4, the thing seized shall be deemed to have been duly condemned as forfeited.

6. Where notice of claim in respect of any thing seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the

condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to forfeiture, that court shall condemn that thing as forfeited.

7. Where any thing is in accordance with either paragraph 5 or 6 deemed to have been condemned or condemned as forfeited, then without prejudice to any restoration or sale, the forfeiture shall be deemed to have had effect from the date when the liability to forfeiture arose.

8. Proceedings for the condemnation of any thing shall be civil proceedings and may be instituted—

(a) in any Magistrate's Court having jurisdiction in the place—

- (i) where any offence in connection with that thing was committed or where any proceedings for such an offence have been instituted;
- (ii) where the claimant resides or, if the claimant has specified a solicitor under paragraph 4, where that solicitor has his office; or
- (iii) where that thing was found, detained or seized or to where the thing was first brought after being found, detained or seized; or

(b) in the High Court.

9. (1) In any proceedings for condemnation, the claimant or his solicitor shall make oath that the thing was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) In any proceedings for condemnation before the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.

(3) If any requirement of this paragraph is not complied with, the court shall give judgement for the Comptroller.

10. (1) Any party to condemnation proceedings in a Magistrate's Court may appeal to the High Court against the decision of that Magistrate's Court in those proceedings.

(2) Where any appeal is made against the decision of any court in condemnation proceedings, the thing seized shall remain in the possession of, or be returned to the possession of the Comptroller until the final determination of the matter.

11. In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been as set forth in the process, unless the contrary is proved.

12. Where any thing is at the time of its seizure the property of a body corporate, two or more partners or any number of persons exceeding five not being in partnership, the oath required to be taken by paragraph 9, and any other thing required by this Schedule or the rules of court to be done by, or by any person authorised by, the claimant or owner may be taken or done by the following persons respectively, that is to say—

- (a) where the owner is a body corporate, the secretary or some other authorised officer of that body;
- (b) where the owners are in partnership, any of those owners; or
- (c) where the owners are any number of people exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

13. (1) Where, under section 129(5), any thing is restored, sold or destroyed, and it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall on demand by the claimant tender to him—

- (a) where the thing was restored, an amount equal to any amount paid as a condition of that restoration;
- (b) where the thing was sold, an amount equal to the proceeds of sale; or
- (c) where the thing was destroyed an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under sub-paragraph (1) includes a sum on account of the duty chargeable on the thing which has not been paid, the Comptroller may deduct so much of that amount as represents the duty.

(3) If the claimant accepts an amount tendered to him under sub-paragraph (1), he shall not be entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.

(4) Where the claimant and the Comptroller are unable to agree upon the market value of any thing destroyed under section 129(5), that value shall be determined by the Customs Appeal Commissioners.

Printed by the Law Revision Unit of the Government of Montserrat
Authorised Printers for this revised edition