

Notes for Guidance – Customs Act 2015

The notes contain:

- An overview of the provisions of each Part of the Act;
- A commentary on every section in each Part of the Act, giving a detailed description of the provisions and effects of the sections.

The Customs Act 2015 (No. 18 of 2015) was signed by the President on the 18th June 2015. The Act commenced on 31st December 2016 in accordance with Customs Act 2015 (Commencement) Order which was signed by the Minister for Finance on 13th December 2016.

Due to the commencement of Regulation (EU) 952/2013 of the European Parliament and of the Council on 1st May 2016 (Union Customs Code), technical amendments to the Act were required. The European Union (Customs Code) Regulations 2016, amends the Customs Act 2015 and has effect from 31st December 2016 also.

The Act is further amended by the Finance (Tax Appeals) Act 2015, the Data Protection Act 2018 and the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

Four other associated statutory instruments also have effect from 31 December 2016, namely:

- Customs (Reports Inwards and Outwards by Vessels) Regulations 2016
- Customs (Reports Inwards and Outwards by Aircraft) Regulations 2016
- Customs (Electronic Filing of Returns) Order 2016
- Customs (Mandatory Electronic Filing) (Specified Persons) Regulations 2016

These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Customs Act 2015.

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OVERVIEW OF THE CUSTOMS ACT 2015

1. Background

The principal domestic legislation under which Irish customs was operated over many years had been the Customs Consolidation Act 1876. This Act had been extensively adapted over time to take account of various events and developments. As a consequence, many of the provisions in the 1876 Act had been of doubtful validity, but had remained on the Statute Book. In addition, a number of other Acts concerning customs matters were also passed in the intervening period, including the Customs Act 1956 and the Customs and Excise (Miscellaneous Provisions) Act 1988. Numerous Finance Acts had also, over the years, introduced customs measures, as had a number of ministerial regulations made under the European Communities Act 1972.

The result was a complicated, overlapping structure of both old and newer national customs legislation, which was difficult to follow and understand. The Customs Act is designed to address these shortcomings. It repeals the old structure with a single, much shorter Customs Act.

There is also a European dimension to customs. The European Union customs legislation formerly known as the Community Customs Code and since 1 May 2016, becoming the Union Customs Code - now directly provides most of the legal framework for customs, including the rules relating to rates of customs duty in different circumstances, customs valuation, the form of declarations etc.

2. Requirements for updated Legislation

National legislation was therefore needed in respect of those areas that were not already covered by European Union legislation or where it was necessary to transcribe specific EU provisions into national law. Typically, these areas include certain control provisions, enforcement powers, and sanctions for breaches of the various customs provisions. The bulk of the material in the Act reflects a small core of existing legal provisions in relation to customs, now updated to reflect modern language and terminology. (This included certain necessary controls and procedures mainly related to arriving and departing vessels and aircraft and specifying the various offences that arise in a customs context.)

The Act also includes a number of administrative and housekeeping provisions, among them the repeal and revocation of a large body of existing legislation. Similarly, the Act combines a number of specific EU and international customs obligations relating to mutual assistance between Ireland and other Member States, relating to the control of cash entering or leaving the European Union through the State, and to centralised customs clearance. The Act also carries forward the existing customs appeals procedures. The new legislative provisions are largely a reiteration of the procedures that have been in place.

The Act also restates and modernises the existing legislation applying customs law to prohibited or restricted goods on their import into, or export from, the State. It sets out the rate of interest to be applied on customs duties that are not paid on time. Lastly, the Act amends the Taxes Consolidation Act 1997 in respect of Revenue offences.

OVERVIEW OF THE CUSTOMS ACT 2015

3. Structure of the Act

The Customs Act 2015 is divided into 8 Parts as follows:

- ▮ **Part 1** provides for the short title, construction and commencement of the Act and for the definition of certain words and expressions used in the Act. It also provides for the repeal of certain enactments and the revocation of certain statutory instruments and also for a number of technical linkages to provide for legal certainty and for legal continuity.
- ▮ **Part 2** of the Act contains provisions relating to customs controls and provides for the appointment of customs ports and customs airports for the arrival and departure of vessels and aircraft into or out of the State. It also provides for the approval of a place at a customs port or a customs airport for customs controls under this Act.
- ▮ **Part 3** contains provisions dealing with customs offences relating to improper import or export of goods and the resulting fines/penalties and various aspects of customs-related court proceedings.
- ▮ **Part 4** deals with the powers of customs officers to carry out their functions under the Customs Acts. It provides customs officers with various powers under the Customs Acts in relation to goods which have been imported, declared for export or otherwise under customs control. It also provides customs officers with powers to search persons in certain circumstances and to stop and question a person entering or leaving the State.

OVERVIEW OF THE CUSTOMS ACT 2015

- ▮ **Part 5** deals with general customs administrative matters. It provides that the duties of customs are under the care and management of the Commissioners who may authorise customs officers to carry out various functions in connection with these duties. This Part also provides that the Commissioners and the Minister for Finance, respectively, may make regulations to give effect to the Customs Act.

- ▮ **Part 6** deals with EU and international customs obligations. It provides for:
 - penalties for the contravention of certain customs rules and procedures;
 - the continuation of the force of law in respect of the Naples II Convention,
 - the application by Ireland of the 2009 EU Council Decision; for controls of cash entering or leaving the European Union through the State and lastly,
 - the transposition into national law of the EU Council Convention of 10 May 2009 on centralised customs clearance.

- ▮ **Part 7** provides for the appeal procedures in relation to customs decisions and assessments of customs duty. These sections are a restatement of the existing legislation.

- ▮ **Part 8** deals with a number of miscellaneous provisions. These include a restatement and modernisation of existing legislation applying customs law to prohibited or restricted goods on their import into, or export from, the State. It also deals with provisions relating to the charging of interest arising from late payment of customs duties and lastly, the Act amends section 1078 of the Taxes Consolidation Act 1997, in respect of Revenue offences ,by including a new offence.

There are 2 Schedules to the Act, as follows:

- ▮ **Schedule 1** contains a list of the repeals and the revocations.

- ▮ **Schedule 2** includes the text of the Council Convention on Centralised Customs Clearance concerning the allocation of national collection costs retained when traditional own resources are made available to the EU budget.

PART 1 – PRELIMINARY AND GENERAL

Overview

This Part contains the short title of the Act and the definition of certain words and expressions used throughout the Act. It also contains provisions for the repeal of certain enactments and the revocation of certain statutory instruments as well as providing for legal continuity between the repealed enactments and the new Customs Act.

1. Short title, construction and commencement

Summary

This section provides that the short title of the Act shall be the Customs Act 2015 and that it shall enter into force when the Minister for Finance makes the relevant commencement order(s).

This is a standard provision.

PART 1 – PRELIMINARY AND GENERAL

1. Short title, construction and commencement (cond.)

Details

Subsection (1) provides that the Act may be cited as the Customs Act 2015.

Subsection (2) provides that the Customs Acts and this Act shall be construed together as one.

Subsection (3) provides for the date of entry into operation of the Act and for different dates for particular provisions where necessary.

Subsection (4) provides for the date of entry into operation of the repeals and revocations listed in Schedule 1 and for different dates for different repeals/revocations where necessary.

These are all standard provisions.

PART 1 – PRELIMINARY AND GENERAL

2. Interpretation

Summary

This section provides for the definition, for the purposes of the Act, of certain words and expressions used in the Act. This is to assist in the understanding and application of the Act.

This is a standard provision and the definitions are self explanatory.

PART 1 – PRELIMINARY AND GENERAL

3. Repeals and Revocations

This section provides for the repeal of certain enactments and the revocation of certain statutory instruments to the extent specified in Part 1 and Part 2 of Schedule 1.

Under section 1(4) of this Act, the repeals and revocations will have effect on such day as the Minister for Finance may appoint by order and different days may be so appointed for each provision to be repealed or revoked.

The intention is to repeal and revoke most, if not all, existing customs legislation. Much of the legislation repealed has, in effect, been redundant for some time, due mainly to the precedence of EU legislation in the customs field.

PART 1 – PRELIMINARY AND GENERAL

4. Saver

This section provides for a technical linkage where a provision of the Act operates in substitution for a provision of a repealed enactment. This is a standard technical mechanism which provides for legal certainty.

5. Continuity and construction of certain references to old and new law

This section provides for legal continuity in the operation of the law relating to customs in respect of the relationship between the repealed enactments and the new Customs Act.

For example, where there is an existing prosecution in a smuggling case, the section provides that this will not be affected by the repeal of the law in force when the offence was committed.

Also, serving officers of Customs and Excise appointed or authorised by the Commissioners under existing arrangements and previous legislation, were from the date of passing of this Act, deemed to be officers of customs.

PART 2 – CUSTOMS CONTROLS

Overview

This Part, which comprises 8 sections (sections 6 to 13 inclusive) of the Act, contains provisions relating to customs controls. It provides that the Commissioners may appoint, for the purposes of the Customs Acts, any place in the State as a customs port or a customs airport for the arrival and departure of vessels and aircraft into or out of the State. It also provides that the Commissioners may approve, subject to certain conditions and restrictions, a place at a customs port or a customs airport for customs controls under this Act.

These controls by customs apply to the arrival and departure of vessels and aircraft into, or out of, the State in the context of:

- ▮ loading and unloading of goods and stores;
- ▮ embarkation and disembarkation of passengers
- ▮ the storage of goods awaiting customs clearance;
- ▮ the movement of vessels and aircraft into and out of the State;
- ▮ the reporting on vessels and aircraft, respectively, arriving in or departing from the State;
- ▮ persons entering or leaving the State and of their baggage, including the contents and anything brought by that person by whatever means;
- ▮ the continuation of the existing control by customs of postal traffic into and out of the State.

Sections 8 to 13 inclusive provides for an offence for contravention of the provisions of those sections and for a fine of €5,000 on summary conviction.

PART 2 – CUSTOMS CONTROLS

6. Customs ports and airports

Summary

This section provides that the Commissioners may appoint, for the purposes of the Customs Acts, any place in the State as a customs port or a customs airport for the arrival and departure of vessels and aircraft into or out of the State.

Such appointments may be amended or revoked, and, are subject to certain conditions which may be revoked, varied or amended as required.

PART 2 – CUSTOMS CONTROLS

6. Customs ports and airports (cond.)

Details

Subsection (1) provides for the appointment of customs ports and customs airports by the Commissioners.

Subsections (2) and (3) provide that customs airports shall be, either Type 1, meaning, large international airports or Type 2, meaning smaller airports where a permanent customs presence is not in place.

Subsection (4) allows the Commissioners to amend or revoke an appointment made under *subsection (1)* or amend or revoke a condition or restriction to which the appointment was subject.

Subsection (5) provides that existing appointments made under any enactment shall continue in force for a period of five years from the date of passing of the Act and the provisions in *subsection (4)* of the section apply accordingly.

PART 2 – CUSTOMS CONTROLS

7. Approval of places within customs ports and airports

Summary

This section provides that the Commissioners may approve, subject to certain conditions and restrictions, a place at a customs port or a customs airport

- for the arrival or departure of vessels or aircraft,
- for the loading and unloading of goods, and
- for the embarkation and disembarkation of passengers.

The operator of any facility or building within a customs port or airport may be required by Revenue to provide customs with reasonable office accommodation and other facilities. The operator of a customs airport appointed under section 6(1) and the occupier of any place, e.g. facility or building within a customs port or customs airport approved under subsection 1 of this section may be required by Revenue to provide customs staff with office accommodation and other facilities.

PART 2 – CUSTOMS CONTROLS

7. Approval of places within customs ports and airports (cond.)

Details

Subsection (1) provides for the approval of specific places within customs ports and customs airports by the Commissioners, for the conduct of certain operations, including:

- the arrival and departure of vessels or aircraft,
- the loading or unloading of goods, stores and conveyances and
- the embarkation or disembarkation of passengers, crew and their baggage.

Subsection (2) allows the Commissioners to amend or revoke an approval made under *subsection (1)* or amend or revoke a condition or restriction to which the approval was subject.

Subsection (3) provides that existing approvals shall continue in force for a period of up to 5 years from the date of passing of the Act and the provisions in *subsection (2)* of this section apply accordingly.

Subsection (4) requires the operator of a customs airport appointed under section 6(1) and the occupier of any facility or building within a customs port or customs airport approved under *subsection (1)* of this section to provide customs staff with reasonable office accommodation and other facilities as are appropriate.

PART 2 – CUSTOMS CONTROLS

8. Customs control of movement of vessels into and out of State

Summary

This section provides that the master of a vessel entering the State shall ensure that the vessel berths, the goods are unloaded and the passengers are disembarked at an approved place within a customs airport.

The section likewise provides that the master of a vessel departing the State shall ensure that the vessel departs, the goods are loaded and the passengers embarked at an approved place within a customs Airport.

The section provides derogation from these requirements, subject to certain conditions, in respect of instances of *force majeure* or being obliged by law or other requirement relating to navigation and in instances where the Commissioners grant permission.

The section provides for a fine of €5,000 on summary conviction, for an offence of contravention or non-compliance with the provisions of the section.

PART 2 – CUSTOMS CONTROLS

8. Customs control of movement of vessels into and out of State (contd.)

Details

Subsection (1) requires the master of a vessel entering the State to berth at a customs port in a place approved under *section 7(1)*. It also requires the master to ensure that all goods are unloaded and all passengers disembarked only at a place approved under *section 7(1)* of the Act. This requirement applies unless otherwise authorised or exempted by the Commissioners.

Subsection (2) makes provision for cases of *force majeure*, where the master may be unable to comply with the requirements of *subsection (1)* due to accident, adverse weather, etc.) or is obliged by law or other requirement relating to navigation.

Subsection (3) requires the master of a vessel departing the State to ensure that the vessel only departs from a place approved under *section 7(1)*. It also requires the master to ensure that all goods are loaded and all passengers embarked only at a place approved under *section 7(1)*. This requirement applies unless otherwise authorised or exempted by the Commissioners.

Subsection (4) obliges the master of a departing vessel not to allow the vessel to re-enter the State except at a place approved under *section 7(1)*, unless he is obliged to do so due to *force majeure* (such as accident, adverse weather or other unavoidable cause.) or is obliged by law or other requirement relating to navigation.

PART 2 – CUSTOMS CONTROLS

8. Customs control of movement of vessels into and out of State (contd.)

Subsections (5) and (6) lay down the procedures to be followed by the master of a vessel arriving at a place not approved under *section 7(1)* due to *force majeure or being obliged by law*. Basically, the master must contact customs and comply with any directions then given to him or her by customs.

Subsection (7) provides for a fine of €5,000 on summary conviction for breaches of the requirements of this section.

PART 2 – CUSTOMS CONTROLS

9. Report inwards and outwards of vessels

Summary

This section provides that the master of a vessel arriving in, or departing from, the State is required –

- ▮ under and in accordance with regulations under *subsection (3)*, to deliver a report of the vessel to customs, and
- ▮ to answer all questions put to him or her by a customs officer relating to the voyage, to the vessel, to the passengers, and goods carried, and to the crew.

The section provides for an offence for contravention of or non-compliance with the provisions of the section and provides for a €5,000 fine on summary conviction.

PART 2 – CUSTOMS CONTROLS

9. Report inwards and outwards of vessels (cond.)

Details

Subsection (1) requires the master of a vessel –

- ▮ under and in accordance with regulations under *subsection (3)*, to make a report of the vessel to customs on arrival, and
- ▮ to answer all questions relating to the vessel, its passengers and crew, baggage, conveyances and goods or stores carried on board and to the voyage as may be put to him or her by a customs officer.

Subsection (2) requires the master of a vessel, similarly –

- ▮ under and in accordance with regulations under *subsection (3)*, to make a report of the vessel to customs on departure, and
- ▮ to answer all questions relating to the vessel, its passengers and crew, baggage, conveyances and goods or stores carried on board and to the voyage as may be put to him or her by a customs officer.

Subsection (4) provides for a fine of €5,000 on summary conviction, for breaches of the requirements of the section.

PART 2 – CUSTOMS CONTROLS

9. Report inwards and outwards of vessels (cond.)

The reporting obligations for vessels are set out in the Customs (Reports Inwards and Outwards by Vessels) Regulations 2016.

Under the regulations, the master of a vessel carrying the following goods must submit a report to Revenue

- goods which have not been released for free circulation within the European Union, or
- goods subject to any prohibition or restriction on importation or exportation.

Ferries must also provide a report of all vehicles on board.

The circumstances in which reports are required, the place and time for submission, the form, manner and particulars of such reports are outlined in the above mentioned regulation.

PART 2 – CUSTOMS CONTROLS

10. Customs control of movement of aircraft into and out of State

Summary

This section provides that the pilot-in-command of an aircraft entering the State is required to land the aircraft at a customs airport and shall ensure that all goods, stores, conveyances, passengers, baggage and crew are only unloaded or disembarked at an approved place within a customs airport.

The section likewise provides that the pilot-in-command of an aircraft departing the State is required to depart from a customs airport and shall ensure that all goods, stores, conveyances, passengers, baggage and crew are only loaded or embarked at an approved place within a customs airport.

The section provides derogation from these requirements, subject to certain conditions, in respect of instances of *force majeure* or being obliged by law or other requirement relating to aviation and in instances where the Commissioners grant permission.

The section places an onus on the pilot-in-command of the aircraft, and also on the person in charge of the airport, to comply with the conditions or restrictions of approval of certain airports.

The section provides for a €5,000 fine on summary conviction, for an offence of contravention or non-compliance with the provisions of the section.

PART 2 – CUSTOMS CONTROLS

10. Customs control of movement of aircraft into and out of State (cond.)

Details

Subsection (1) requires the pilot-in-command of an aircraft entering the State to arrive at an appointed customs airport. This requirement applies unless otherwise authorised or exempted by the Commissioners.

Subsection (2) requires the pilot-in-command of an aircraft departing the State to depart from an appointed customs airport. This requirement applies unless otherwise authorised or exempted by the Commissioners.

Subsection (3) requires that any landing or departure from a customs airport must be in compliance with the conditions or restrictions attaching to the appointment of that airport as a customs airport.

Subsections (4) and (5) require the pilot-in-command to ensure that all goods etc. are loaded or unloaded, and all passengers etc. are embarked or disembarked, only at a place approved under *section 7(1) (b) or 7(1) (c)* of the Act. This requirement applies unless otherwise authorised or exempted by the Commissioners.

PART 2 – CUSTOMS CONTROLS

10. Customs control of movement of aircraft into and out of State (cond.)

Subsection (6) makes provision for cases of *force majeure*, where the pilot may be unable to comply with the requirements of *subsections (1) (3) or (4)* due to accident, adverse weather, etc. or is obliged by law or other requirement relating to navigation.

Subsection (7) obliges the pilot-in-command of an aircraft departing the State not to re-enter the State except at a customs airport, unless the aircraft is compelled to do so due to *force majeure* (such as accident, adverse weather, etc.) or is required by law or other requirements relating to aviation.

Subsections (8) and (10) lay down the procedures to be followed on landing at a place other than a customs airport. Basically, the pilot-in-command should contact customs and comply with any directions given to him or her by customs.

Subsection (9) requires that the operator of the airport notify customs of any arrivals or departures in contravention of the conditions of appointment of that airport.

Subsection (11) provides for a fine of €5,000 on summary conviction, for an offence of contravention or non-compliance for breaches of the requirements of the section.

PART 2 – CUSTOMS CONTROLS

11. Report inwards and outwards of aircraft

Summary

This section provides that the pilot-in-command of an aircraft arriving in, or departing from, the State is required –

- ▮ under and in accordance with regulations under *subsection (3)*, to deliver a report of the aircraft to customs, and
- ▮ to answer all questions put to him or her by a customs officer relating to the flight, to the aircraft, to the passengers and goods carried, and to the crew.

The section provides for an offence for contravention of, or non-compliance with, the provisions of the section and provides for a €5,000 fine on summary conviction.

11. Report inwards and outwards of aircraft (cond.)

Details

Subsection (1) requires the pilot-in-command of an arriving aircraft –

- ▮ under and in accordance with regulations under *subsection (3)*, to make a report of the aircraft to customs on arrival, and
- ▮ to answer all questions relating to the aircraft, its passengers and crew baggage, conveyances and goods or stores carried on board and to the flight as may be put to him or her by a customs officer.

Subsection (2) requires the pilot-in-command of a departing aircraft, similarly –

- ▮ under and in accordance with regulations under *subsection (3)*, to make a report of the aircraft to customs on departure, and
- ▮ to answer all questions relating to the aircraft, its passengers and crew baggage, conveyances and goods or stores carried on board and to the flight as may be put to him or her by a customs officer.

PART 2 – CUSTOMS CONTROLS

11. Report inwards and outwards of aircraft (cond.)

The reporting obligations for aircraft are set out in the Customs (Reports Inwards and Outwards by Aircraft) Regulations 2016.

Under the regulations, the pilot in command of an aircraft carrying the following goods must submit a report to Revenue

- goods which have not been released for free circulation within the European Union, or
- goods subject to any prohibition or restriction on importation or exportation.

The circumstances in which reports are required, the place and time for submission, the form, manner and particulars of such reports are outlined in the above mentioned regulation.

PART 2 – CUSTOMS CONTROLS

12. Control of persons and their baggage

Summary

This section provides that a person entering or leaving the State is required to –

- ▮ declare to an officer of customs anything in his or her baggage or brought with him or her, which are liable to any duty or tax, or are subject to any prohibition or restriction on importation or exportation,
- ▮ answer all questions in respect of his or her arrival or departure, in respect of his or her identity, place of residence and address within the State and in respect of his or her baggage,
- ▮ unpack the baggage for examination, and
- ▮ remain present for the duration of the examination.

The section makes it an offence to contravene, or fail to comply with, any of the provisions of the section and provides for a €5,000 fine on summary conviction.

PART 2 – CUSTOMS CONTROLS

12. Control of persons and their baggage

Details

Subsection (1) requires a person entering or leaving the State:

- ⊞ to declare to an officer of customs, any goods which him or her which are liable to any duty or tax, or are subject to any prohibition or restriction on importation or exportation,
- ⊞ to answer questions put to him or her by customs in respect of their arrival or departure, in respect of their identity, usual place of residence and address within the State and about their baggage, as well as anything brought by that person by whatever means,
- ⊞ to unpack or repack the baggage, and
- ⊞ to remain present during this process.

PART 2 – CUSTOMS CONTROLS

12. Control of persons and their baggage (cond.)

Subsection (2) sets out the manner in which a person makes a customs declaration where a channel system is in place at customs ports and customs airports.

Subsection (3) provides that where a person leaves a customs port or airport, or other customs place, without making a declaration under *subsection (1)*, then he or she is deemed to have declared that there are no dutiable or prohibited or restricted goods carried in their baggage or brought with him or her. If that person is subsequently found to have in their baggage or on their person goods that are liable to duty or tax, or that are subject to a prohibition or restriction on importation, the person has left themselves open to prosecution for contravention of *subsection (1)*.

Subsection (4) Makes it an offence to contravene, or fail to comply with, any of the provisions of the section and provides for a €5,000 fine on summary conviction.

Subsection (5) provides a definition of “duty or tax” in respect of *section 12* and *section 13*. In these two sections, “duty or tax” means duties of customs, excise duty or Value-Added Tax payable on goods imported or exported.

PART 2 – CUSTOMS CONTROLS

12A. Customs control at customs ports

Summary

This section provides that a person in charge of or taking charge of a vehicle containing goods that has entered the State by ferry at a customs port is required to:

- Comply with instructions from the Commissioners (by electronic means or otherwise) to move the vehicle to an area of customs supervision,
- Ensure that the vehicle remains at that place and comply with such further instructions from the Commissioners until given clearance to depart that place.

The section makes it an offence to contravene, or fail to comply with, any of the provisions of the section and provides for a €5,000 fine on summary conviction or imprisonment for a term of twelve months or both.

PART 2 – CUSTOMS CONTROLS

12A. Customs control at customs ports

Details

Subsection (1) requires a person in charge of or taking charge of a vehicle containing goods which have been unloaded from a ferry at a customs port to:

- comply with such instructions, as are given to him or her electronically or by other means by the Commissioners regarding the movement of the vehicle to a place designed by the Commissioners as an area of customs supervision,
- ensure that the vehicle remains at that place,
- comply with such further instructions as are conveyed by the Commissioners until clearance to depart that place is given.

Subsection (2) makes it an offence to fail to comply with any instructions given by the Commissioners pursuant to subsection (1) or to fail to ensure that the vehicle remains at that place.

Subsection (3) provides for a €5,000 fine and/or 12 month's imprisonment for an offence committed under the section.

PART 2 – CUSTOMS CONTROLS

12B. Procedures for goods entering or departing the State by ferry (from or to a place outside the customs territory of the Union)

Summary

This section sets out procedures for goods entering or departing the State by ferry from or to a place outside the customs territory of the Union.

Carriers (i.e. haulage companies, logistics companies or any person who has assumed responsibility for carriage of a vehicle) are required to provide a Pre-Boarding Notification to the Commissioners via the online Customs Roll-on Roll-off Service in respect of that vehicle prior to its departure on a ferry bound for or departing from the State.

The Pre-Boarding Notification will contain the Master Reference Numbers and relevant movement types for all goods in the vehicle. The requirement to provide a Pre-Boarding Notification also applies to an empty vehicle.

Persons in the supply chain are required to provide the information necessary to complete a Pre-Boarding Notification to the carrier and others as soon as this information becomes available and, in advance of the check in of the vehicle at the ferry port of departure.

The section provides for offences for carriers who fail to provide a Pre-Boarding Notification to the Commissioners and for persons in the supply chain who fail to make the necessary information available to the carrier so that a Pre-Boarding Notification may be completed.

PART 2 – CUSTOMS CONTROLS

12B. Procedures for goods entering or departing the State by ferry (from or to a place outside the customs territory of the Union)

Detail

Subsection (1) defines certain terms for the purposes of the section.

Subsection (2) confirms that the expression “relevant movement” also refers to the carriage of an empty vehicle on a ferry.

Subsection (3) states that the following provisions shall have effect in relation to a relevant shipment, or the effecting of a relevant movement in relation to goods, entering or departing the State.

Subsection (4) requires a person who has made a declaration in accordance with the Customs Acts regarding a proposed relevant shipment or who has made or intends to make a paper or oral declaration in accordance with the Customs Acts regarding a proposed relevant movement to —

- provide the Master Reference Number or particulars of the relevant movement relating to the goods concerned to the carrier, where the identity of the carrier is known to him or her, for the purpose of completion of the Pre-Boarding Notification.
- provide the Master Reference Number or particulars of the relevant movement relating to the goods concerned to any other person in the supply chain to whom the identity of the carrier is known, for the purpose of completion of the Pre-Boarding Notification.

Subsection (5) requires that subsection (4) shall be complied with soon as the information referred to therein becomes available to the persons concerned and, in any event, in advance of the check in of the vehicle concerned by the ferry operator at the ferry port of departure.

Subsection (6) requires a carrier to provide a Pre-Boarding Notification to the Commissioners in relation to a vehicle it has assumed responsibility for the carriage of. The Pre-Boarding Notification relates to any relevant shipments of goods contained in that vehicle or the relevant movements being effected in relation to the goods contained in that vehicle. The Pre-Boarding Notification must comply with *subsection (8)*. The requirement to provide a Pre-Boarding Notification also applies to an empty vehicle.

Subsection (7) requires that the Pre-Boarding Notification is to be provided to the Commissioners prior to the departure of the vehicle concerned on a ferry bound for, or departing from, the State and by means of an electronic data processing technique.

Subsection (8) requires that a Pre-Boarding Notification contains all of the Master Reference Numbers for a relevant shipment being carried on a vehicle and to specify any relevant movements being effected in respect of goods being carried on a vehicle. In the case of an empty vehicle, the Pre-Boarding Notification shall specify that the vehicle does not contain a relevant shipment and is not being used to effect a relevant movement in relation to goods.

Subsection (9) provides that a carrier may appoint a person as the carrier’s agent to fulfil the obligations imposed on the carrier by *subsections (6) to (8)*.

PART 2 – CUSTOMS CONTROLS

12B. Procedures for goods entering or departing the State by ferry (from or to a place outside the customs territory of the Union) (contd.)

Subsection (10) confirms that the carrier remains legally responsible for its obligations under this section notwithstanding any appointment referred to in *subsection (9)*

Subsection (11) provides for an offence for a person who fails to comply with *subsections (4), (5), (6), (7) or (8)*. It provides for a €5,000 fine and/or 12 month's imprisonment.

PART 2 – CUSTOMS CONTROLS

13. Control of postal traffic

Summary

This section provides that the Customs Acts apply to goods imported and exported by post.

The section also provides that the Commissioners may approve premises for the receipt and storage of postal packets awaiting customs clearance and the operator of such premises shall, if required by Revenue, provide and maintain appropriate office accommodation and other facilities for the use of customs staff.

The section provides that the postal authority, in certain cases, shall collect and pay over to the Commissioners duty and tax payable on goods imported in postal packets.

The section provides for an offence for contravention, or failure to comply with, any provision of the section and provides for a €5,000 fine on summary conviction.

The section is, in effect, a restatement and modernisation of existing legislation concerning customs control of postal traffic.

PART 2 – CUSTOMS CONTROLS

13. Control of postal traffic (cond.)

Details

Subsection (1) provides that the Customs Acts apply to postal packets in cross-border mail.

Subsection (2) provides that the Commissioners may approve premises operated by the postal authority for the receipt and storage of postal packets awaiting customs clearance.

Subsection (3) provides that the operator of such premises is required to provide appropriate reasonable office accommodation or other facilities for customs.

Subsection (4) allows customs to open and examine postal packets and the contents without the prior notification of the addressee.

Subsection (5) allows customs to seize as liable for forfeiture a postal packet where the description or the declared value on or attached to that declared postal packet is false or misleading.

Subsection (6) deems the addressee to be the owner of the goods, for the purposes of the section.

PART 2 – CUSTOMS CONTROLS

13. Control of postal traffic (cond.)

Subsection (7) makes provision for the payment and collection of any tax or duty payable in a postal packet in cross-border mail.

- a) Where the duty or tax payable, the value of which falls below the threshold for which a declaration for free circulation is required under the Customs Code, the postal authority is required to collect and pay over any such duty or tax payable to the Commissioners.
- b) Where the addressee does not accept the postal package and the duty or tax payable on it is not collected, the postal authority is required to return the postal packet to the sender.
- c) Where the sender of the postal packet cannot be identified and where the postal packet is subsequently sold or disposed of, as opposed to being destroyed, by or at the request of the postal authority, any tax or duty payable on it must be paid to the Commissioners within 30 days of its disposal.

PART 2 – CUSTOMS CONTROLS

13. Control of postal traffic (cond.)

Subsection (8) specifies the duties and obligations of the postal authority as required by customs with regard to customs operations for the examination of a postal packet that may need to be opened. Such duties and obligations may require the postal authority to bring the package to a place suitable for its examination, to open, unpack and repack the package and provide any facilities and assistance required for such examination or take samples of the goods in the packet and bear any costs in carrying out these operations, other than in respect of samples to be taken, which must be borne by the owner of the goods.

Subsection (9) provides for the recovery by the postal authority from the addressee of any sums paid to the Commissioners.

Subsection (10) provides that postal packets from other Member States shall only be opened or examined in certain circumstances where customs has reasonable grounds to believe that they are in breach of the Customs Acts.

Subsection (11) provides for an offence for contravention, of *subsection (7) or (8)* and provides for a €5,000 fine on summary conviction.

Subsection (12) defines certain terms for the purposes of the section.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

Overview

This Part comprises 11 sections (sections 14 to 24 inclusive) of the Act.

This Part deals, in the first instance, with customs offences and penalties. It provides for offences relating to improper import or export of goods and / or other thing(s).

This Part also deals with various aspects of customs-related court proceedings, in relation to:

- ▮ customs offences tried summarily or on indictment;
- ▮ forfeiture of goods and / or other thing illegally imported or attempted to have been, without payment of duty or at odds with a prohibition or restriction;
- ▮ notice of seizure to the owner of goods and / or other thing(s), where the goods / other thing(s) are seized by a customs officer;
- ▮ notice of claim by a person who claims that something seized as liable to forfeiture was not so liable;
- ▮ court proceedings for condemnation of seized goods and / or other thing(s);
- ▮ rules for court proceedings in relation to customs offences;
- ▮ damages and costs in civil or criminal cases where judgment is given against a Revenue official as the defendant, on account of the seizing or detention of any thing;
- ▮ presumptions and onus of proof in proceedings under the Customs Acts, where certain things may be presumed to be true until the contrary is proven.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

14. Offences relating to improper importation or exportation of goods

Summary

This section provides for offences relating to bringing goods into and out of the state, without payment of any duty or contrary to a prohibition or restriction on their import or export. The section reflects provisions in current legislation. The section also provides for the penalties that apply.

This section is a key provision of the Act, under which prosecutions will be instituted against persons suspected of improper importation and exportation of goods without payment of duty, or contrary to prohibitions or restrictions in effect at the time of importation or exportation. An offence under this section relates to evasion of customs duty at importation.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

14. Offences relating to improper importation or exportation of goods (cond.)

Details

Subsection (1) makes it an offence for any person to –

- ▮ evade or attempt to evade any duties of customs applicable to the importation, or exportation, of goods;
- ▮ take possession, custody or charge of, or to remove, transport, deposit or conceal, or to otherwise deal with any goods liable to duties of customs on importation with intent to defraud the State of such duties;
- ▮ be concerned in the importation into the State or exportation from the State of prohibited or restricted goods;
- ▮ take possession, custody or charge of, or to remove, transport, deposit or conceal, or to otherwise deal with any goods contrary to any prohibition or restriction on importation of those goods.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

14. Offences relating to improper importation or exportation of goods (cond.)

Subsection (2) provides that a person convicted of an offence under this section is liable –

- ▮ on summary conviction, to a fine of €5,000 or to a term of imprisonment not exceeding 12 months, or to both;
- ▮ on conviction on indictment, to a fine not exceeding:
 - a) €125,000 or
 - b) where the value of the goods concerned (including the duty and tax payable thereon) is greater than €250,000, three times the value of those goods, or at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

Subsection (3) provides that where a defendant pleads guilty in the District Court to an indictable offence under this section, the penalty applicable will be the summary penalty provided for under *subsection (2) (a)* of this section, rather than the penalty provided for in section 13(3) of the Criminal Procedures Act 1967.

Subsection (4) provides that nothing in the section prevents any action or other proceedings being taken for the recovery of duties of customs.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

15. Miscellaneous customs offences

Summary

This section provides for a number of miscellaneous offences associated with the improper importation and exportation of goods, ranging from failure to comply with the lawful requirement imposed by an officer of customs to damaging customs property.

A person convicted of an offence under this section is liable on summary conviction to a €5,000 fine, or at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

15. Miscellaneous customs offences (cond.)

Details

Subsection (1) provides for a series of miscellaneous offences, including the following –

- ▮ failure to comply with any lawful obligation imposed under Part 4 of this Act (which concerns powers of officers of customs);
- ▮ damaging any customs property or equipment;
- ▮ adapting a conveyance for smuggling purposes;
- ▮ aiding or abetting in the commission of any of the above.

Subsection (2) deems the master of a vessel or the pilot-in-command of an aircraft to be the person in charge of the goods where any seals locks, marks, etc. are interfered with.

Subsection (3) provides for a €5,000 fine and/or 12 months imprisonment for offences committed under the section.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

16. Trial of offences summarily or on indictment

Summary

This section sets out the criteria used to determine whether a Customs offence is to be tried summarily or on indictment.

The key to this determination is the value of the goods which have been improperly imported or exported.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

16. Trial of offences summarily or on indictment

Details

The section sets out the provisions (aside from any other enactments) for the treatment of customs offences arising from improper importation or exportation into or out of the State of goods under section 14 of this Act.

A person may challenge the estimated value of the goods by notice to the prosecution before the commencement of the period of 4 days ending immediately before the date fixed for the hearing of the proceedings in the District Court unless a later date is given by permission of the Court.

Where three times the value of the goods, which are the subject of a customs offence, exceeds €1,900 then the offence is to be tried on indictment.

The value of goods shall be taken as the price they would be expected to fetch on the open market. In the case of prohibited goods, the value is to be taken as the price that such goods could be expected to fetch on the market for the unlawful sale or supply of such prohibited goods.

Where the value placed on the goods by customs is challenged by the defendant, the judge in the District Court will determine their value before proceeding with the case.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

17. Forfeiture

Summary

This section provides that goods which have been illegally imported or exported, i.e. without payment of duty or contrary to a prohibition or restriction are liable to forfeiture.

Any conveyances or any goods which are packed with or used to conceal goods liable to forfeiture shall themselves be liable to forfeiture.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

17. Forfeiture (cond.)

Details

Subsections (1) and (2) provide for liability to forfeiture of goods which are the subject of an offence of evasion of customs duty.

Subsection (1) specifically provides that any goods in respect of which an offence has been committed under section 14 or 15 of the Act.

It also provides for forfeiture of goods packed with them, or used to conceal them, and of vehicles used to transport them.

Subsection (2) provides that where any goods or conveyances are liable to forfeiture under *subsection (1)*, anything found to be containing such goods or conveyances, including anything which was made use of in the transport of such goods or conveyances is also liable to forfeiture.

Subsection (3) is a new provision and is intended to provide for a situation where customs duty is not paid when it becomes due. Normally, customs duty is paid or secured before goods are released from official control. However, situations can arise, for example in the case of an audit of a trader's accounts, where a liability to duty may arise and if that duty is not paid then such goods will in future be liable to forfeiture.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

18. Notice of seizure

Summary

This section requires that, where goods are seized by a customs officer, notice of that seizure must be given to the owner of the goods, except in certain specified circumstances.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

18. Notice of seizure (cond.)

Details

Subsection (1) requires an officer of customs to give notice of the seizure of anything as liable to forfeiture and of the grounds for seizure to any person who, to the officer's knowledge, was at the time of the seizure the owner of the thing seized.

Subsection (2) provides that the notice under *subsection (1)* need not be given to a person if the seizure was made in the presence of the person, the person whose offence or suspected offence occasioned the seizure or in the case of anything seized in any vessel or aircraft, in the presence of the master or pilot-in-command of such vessel or aircraft.

Subsection (3) sets out the circumstances in which a notice of seizure is deemed to have been duly given to the person concerned, namely –

- ▮ if it is delivered to the person personally,
- ▮ if it is sent to person's usual or last known address, or in the case of a body corporate, at its registered or principal office, or
- ▮ by publication of notice of the seizure in the *Iris Oifigiúil* if the person has no known address in the State.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

19. Notice of claim

Summary

This section provides that a person, who claims that anything seized as liable to forfeiture is not so liable, must, within 30 days of the date of the notice of seizure or, where no such notice has been given to the claimant, within 30 days of the date of the seizure, give notice in writing of such claim to the Commissioners.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

19. Notice of claim (cond.)

Details

Subsection (1) provides that a person who claims that anything seized as liable to forfeiture is not so liable must, within 30 days of the date of the notice of seizure or, where no such notice has been given to the claimant, within 30 days of the date of the seizure, give notice in writing of such claim to the Commissioners.

Subsection (2) provides that a notice under subsection (1) shall specify the name and address of the claimant and the basis on which the claim is grounded. Where the address of the claimant is outside the State, any documents relating to proceedings for condemnation (civil proceedings) may be served at that address by post.

Subsection (3) specifies that where upon expiry of the 30 days deadline referred to in *subsection (1)* no notice of claim is received, then the seized goods shall be deemed to be condemned as forfeited, and the forfeiture shall apply from the date when the liability to forfeiture arose.

Subsection (4) provides that, where a notice of claim is given, then the Commissioners shall take court proceedings under *section 20* of the Act for the condemnation of the seized goods.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

20. Proceedings for condemnation by court

Summary

This section provides for proceedings for condemnation by the court. It also outlines the relevant court jurisdiction and procedures for condemnation by way of civil proceedings.

The section also deals with the establishment of proof of ownership of goods and / or conveyances seized and provides that the Commissioners may stay or compound any condemnation proceedings.

The section also provides indemnity for Revenue officials and others, in respect of the seizure of goods and / or conveyances where there was probable cause for making theseizure.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

20. Proceedings for condemnation by court (cond.)

Details

Subsection (1) provides that condemnation proceedings are civil proceedings, and that such proceedings shall be commenced in the name of the Commissioners.

Subsection (2) provides that where in any condemnation proceedings the court finds that the thing seized was, at the time of seizure, liable to forfeiture, the court shall condemn it as forfeited, and in any other case the court shall order its release.

Subsection (3) provides for the court jurisdiction in which condemnation proceedings may be initiated.

Subsection (4) provides that in any condemnation proceedings, the claimant or any solicitor acting on behalf of such claimant, shall state on oath that the thing seized was, or was to the best of their knowledge and belief, the property of the claimant at the time of the seizure.

Subsection (5) provides that the Commissioners may, in their discretion, stay or compound any condemnation proceedings.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

20. Proceedings for condemnation by court (cond.)

Subsection (6) provides that the Commissioners may restore anything seized which is the subject of condemnation proceedings.

Subsection (7) (a) provides that, where in any condemnation proceedings, judgment is given for the claimant and the court or judge certifies that there was probable cause for making such seizure or detention, no officer or other person who made or assisted in making the seizure is liable to any civil or criminal proceedings on account of the seizure or detention of the thing seized.

Subsection (7) (b) provides that where in any condemnation proceedings, anything is condemned as forfeited, the forfeiture shall apply from the date when the liability to forfeiture arose.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

21. Proceedings in relation to offences

Summary

This section provides for the rules for Court proceedings in relation to customs offences under the Customs Acts.

These cover –

- ▮ joint and several liability,
- ▮ offences committed by bodies corporate,
- ▮ continuity of proceedings,
- ▮ serving of summonses,
- ▮ time limits, and
- ▮ non-applicability of section 1(1) of the Probation of Offenders Act 1907.

The section also provides that where the duties of customs have been secured by a bond, or otherwise, this will not be regarded as relevant when deciding whether or not an offence has been committed.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

21. Proceedings in relation to offences (cond.)

Details

The section provides for a number of miscellaneous matters relating to court proceedings in relation to any offence under the Customs Acts. Specifically, it provides as follows:

Subsection (1) provides that, where an offence under the Customs Acts has been committed by several persons, then proceedings may be instituted against such persons jointly or severally and on the imposition of a fine or penalty for the recovery of that fine or penalty, the same shall be applied jointly or severally.

Subsections (2) and (3) provide that directors, managers, etc. of corporate bodies shall be deemed to be guilty of offences under the Customs Acts committed by such bodies, where it is shown that the offence was committed with their consent or through their neglect.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

21. Proceedings in relation to offences (cond.)

Subsection (4) provides that Court proceedings which have been instituted or continued in the name of an officer of the Commissioners, who then ceases for any reason to be such an officer, or being still an officer, is absent at any time during proceedings, may be continued in his or her name or in the name of any other officer of the Commissioners.

Subsection (5) provides that any summons, notice, order or other document relating to proceedings relating to any appeal against a judgment pursuant to such proceedings under the Customs Acts may be served by an officer of the Commissioners.

Subsection (6) provides that in any proceedings, the fact that duties of customs had been secured by bond or otherwise shall not be relevant in deciding whether or not an offence has been committed.

Subsection (7) provides that summary proceedings in relation to a customs offence may be instituted within 2 years of the date of the offence.

Subsection (8) provides that offences committed under the Customs Acts will not benefit from the Probation of Offenders Act 1907.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

22. Damages

Overview

This section provides that in civil or criminal cases where judgment is given against a Revenue official as the defendant on account of the seizing or detention of any thing –

- ▮ the plaintiff will not be entitled to any damages or costs, besides the thing seized or the value of such thing, and
- ▮ the defendant will not be liable to punishment or penalty,

providing the court finds probable cause for the seizure or detention.

No change of substance is involved here.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

22. Damages (cond.)

Details

This section provides protection for officers seizing or detaining goods (or any thing) where a civil or criminal case is taken against such officers, provided that the court or judge certifies that there was probable cause for such seizure or detention.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

23. Presumptions and onus of proof

Summary

This section provides that, in proceedings under the Customs Acts, certain things may be presumed to be true until the contrary is proven. This allows cases to proceed without presentation of proof of certain specified matters, for example, that a person is or was a properly appointed and authorised officer of customs.

The section also provides that, in proceedings under the Customs Acts brought against the State, where any question arises in relation to certain specified matters, then the onus of proof lies with the person bringing the proceedings.

23. Presumptions and onus of proof (cond.)

Details

Subsection (1) provides that an averment (a statement that a particular fact is true) in respect of certain matters specified in the subsection shall be sufficient evidence of the matter in question unless the contrary is shown.

These matters are –

- ▮ *Subsection (1)(a)*: that the proceedings have been instituted by order of the Commissioners;
- ▮ *Subsection (1)(b)*: that any person is or was a Commissioner, an officer of the Commissioners, an officer of customs or a member of the Garda Síochána or the Defence Forces;
- ▮ *Subsection (1)(c)*: that any person is or was an officer appointed by the Commissioners or authorised by them for the purpose of the Customs Acts;
- ▮ *Subsection (1)(d)*: that the Commissioners are or are not of an opinion as to any matter as to which they are required to have an opinion under any provision of the Customs Acts; or
- ▮ *Subsection (1) (e)*: that any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid the seizure of those goods.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

23. Presumptions and onus of proof (cond.

Subsection (2) provides that where, in any proceedings relating to goods seized under the Customs Acts and which have been brought against one or more of the following:

- a) the State,
- b) the Attorney General,
- c) the Commissioners,
- d) the Revenue Solicitor, or
- e) an officer of the Commissioners,

any question arises as to the following matters:

- (i) the place from which any goods have been brought,
- (ii) compliance with any prohibition or restriction on the importation or exportation of goods,
- (iii) whether goods were lawfully imported on payment of duties payable or on securement of duties payable, as the case may be, on them,
- (iv) whether goods were lawfully imported,
- (v) whether goods were lawfully unloaded from any conveyance,
- (vi) whether goods were brought or sent to or kept at any place for the purpose of exportation,
- (vii) whether goods were dealt with in any other manner for the purpose of exportation, or
- (viii) whether any signal or communication made was not intended to aid or assist the unlawful importation or unlawful exportation of goods,

then the onus of proof lies with the person bringing the proceedings.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

23. Presumptions and onus of proof (cond.)

Subsection (3) provides that in any proceedings for an offence under the Customs Acts, the production of a certificate purporting to be signed by an officer of the State Laboratory or of the Forensic Science Laboratory shall, until the contrary is proved, be evidence of any fact thereby certified – for example stating the result of any test, examination or analysis of any goods.

Subsection (4) defines three terms used in the section.

PART 3 – OFFENCES, PENALTIES AND PROCEEDINGS

24. Other penalties to which a person may be liable

Summary

This section provides that a person may be liable for more than one penalty in respect of the same offence under either customs legislation or other legislation.

For example, in relation to a single smuggling event, a person could be found liable to a number of separate charges under the Customs Acts and under the Misuse of Drugs legislation and, if found guilty, may be liable to penalties under both sets of legislation.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

PART 4 – POWERS OF OFFICERS OF CUSTOMS

Overview

This Part comprises sections (sections 25 to 35 inclusive) of the Act and deals with the powers of customs officers to carry out their functions under the Customs Acts. It provides customs officers with powers to:

- ▮ enter, inspect and patrol certain places without warrant;
- ▮ stop vessels, aircraft, vehicles and other means of transport;
- ▮ board and search conveyances entering or leaving the State, as well as away from ports and airports and the land frontier;
- ▮ examine goods which have been imported, declared for export or otherwise under customs control;
- ▮ enter and search a specified premises or land under a search warrant, and to seize and detain anything found in the course of the search which might be required as evidence in proceedings for an offence under the Customs Acts or any other enactment;
- ▮ search persons in certain circumstances and subject to certain safeguards;
- ▮ stop and question a person entering or leaving the State as regards their journey and their baggage and, if necessary, to search that baggage;
- ▮ arrest without warrant a person who a customs officer suspects is committing, or has committed, certain offences, or where the person has obstructed or assaulted a customs officer;
- ▮ detain goods being imported or exported, pending the outcome of inquiries and investigations into whether the goods in question are in compliance with the Customs Acts,
- ▮ seize any goods that are liable to forfeiture under the Customs Acts and to deal with seizures, whether before or after the goods have been condemned by the courts.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

25. Power to enter, inspect and patrol certain places

Summary

This section provides for powers of entry, inspection and patrolling of certain places for an officer of customs, and any person assisting such officer, for the purposes of carrying out functions under the Customs Acts, at any time and without warrant.

The power to patrol in this way along the coast and the land frontier, and to enter and inspect customs ports and customs airports and other approved places, is essential to carry out functions under the Customs Acts and as a control mechanism to combat smuggling.

The section also provides that the customs officer and any person assisting such officer may take with him or her, any necessary equipment, materials, customs dog, etc. to assist the officer in the exercise of these powers.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

25. Power to enter, inspect and patrol certain places (cond.)

Details

Subsection (1) gives an officer of customs, and any person assisting such officer, the power, at any time and without warrant, to:

- a) enter upon and inspect any customs port or customs airport or any place approved under the Customs Acts, or any conveyance within such port or airport or place,
- b) patrol upon and pass freely along, and over, any part of the coast or of the shore and over any land within 32 kms. of the land frontier;

for the purposes of carrying out functions under the Customs Acts.

The officer, (and any other person assisting), may remain in any such place for the purposes of carrying out patrols or surveillance.

Subsection (2) provides that in exercising the powers conferred by this section, an officer of customs may be accompanied by other persons and the officer or other persons may bring with him or her any equipment, materials, vessel, aircraft, vehicle, customs dog or any other thing for use or intended for use by the officer in the exercise of those powers.

Subsection (3) provides that an officer of customs, or other person, in charge of any vessel employed for the prevention of smuggling may anchor, moor, berth or land the vessel, or haul the vessel ashore, at any place within the State and at no cost to the State.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

26. Power to stop conveyances

Summary

This section provides that an officer of customs in uniform, or on a patrol vessel of the State, may stop or cause to stop any conveyance that is entering or has entered the State, is leaving the State, is in the contiguous zone of the State, or is in any other place in the State.

The possibility of stopping conveyances at points of import or export is an essential control requirement to ensure compliance with the Customs Acts and to prevent smuggling.

In the case of conveyances elsewhere in the State (namely, away from ports and airports), the possibility of stopping only arises where a customs officer has reasonable grounds to believe that a customs offence is being committed.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

26. Power to stop conveyances (cond.)

Details

Subsection (1) gives a customs officer the power to stop, or cause to stop, any conveyance that is entering or that has entered the State, or that is leaving or intending to leave the State. It also gives officers the power to stop any conveyance at any place in the State, or in the contiguous zone of the State.

Subsection (2) takes account of the EU Single Market and reflects the fact that the control arrangements only apply to intra-Community traffic in certain circumstances. Likewise, in the case of conveyances elsewhere in the State, which are away from ports and airports and the land frontier, intervention can only take place where there are reasonable grounds to suspect that a customs offence has been committed.

Subsection (3) requires that any person in charge of a moving conveyance shall, at the request of an officer of customs referred to in *subsection (1)* and for the purposes of this section, stop such conveyance.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

26. Power to stop conveyances (cond.)

Subsection (4) provides that where a person in charge of a moving conveyance fails to stop that conveyance after having been duly requested to do so by an officer of customs under this section, that officer may take all reasonable measures to stop such conveyance.

Subsection (5) requires a person in charge of a conveyance which is already stationary, or which has been stopped by an officer of customs under this section –

- a) to keep the conveyance stationary for such period as is reasonably required to enable an officer of customs to exercise any power conferred on the officer by *sections 27 or 28*,
- b) where the conveyance is, in the opinion of the officer, situated in a place unsuitable for the exercise of any power conferred on the officer by *sections 27 or 28*, take the conveyance, or cause it to be taken, to such place as he or she considers suitable for the exercise of that power.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

27. Power to board and search conveyances

Summary

This section gives customs officers the power to board and search conveyances at the point of import and export and at other places in the State. The possibility of examining the content of conveyances at the point of import or export and, in certain circumstances, elsewhere in the State, is an essential control requirement for the prevention of smuggling and for ensuring that customs formalities are properly complied with.

In the case of conveyances elsewhere in the State – namely, away from ports and airports – examining the content of a conveyance only arises where a customs officer has reasonable grounds to believe that a customs offence is being committed.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

27. Power to board and search conveyances (cond.)

Details

Subsection (1) gives authority to an officer of customs, to enter or board any conveyance where such conveyance is entering or has entered the State, or is leaving or is intending to leave the State. It also gives officers the power to enter or board any conveyance at any place in the State, or in the contiguous zone of the State.

Subsection (2) takes account of the EU Single Market and reflects the fact that the entry and boarding arrangements only apply to intra-Union traffic in certain circumstances. Likewise, in the case of conveyances elsewhere in the State, that is to say, away from ports and airports and the land frontier, intervention can only take place where there are reasonable grounds to suspect that a customs offence has been committed.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

27. Power to board and search conveyances (cond.)

Subsection (3) sets out the activities which an officer of customs is authorised to undertake when he or she has entered or boarded a conveyance. They include –

- ▮ searching the conveyance,
- ▮ examining goods and records and removing records,
- ▮ taking samples of goods,
- ▮ marking goods,
- ▮ locking, sealing, marking or otherwise securing goods,
- ▮ breaking open any place for which keys are withheld,
- ▮ questioning the person in charge of the conveyance and requiring them to produce documentation and records relating to the conveyance and the goods,
- ▮ seizing and detaining any goods which are liable to forfeiture.

Subsection (4) requires any person in control of the conveyance, and any person travelling on the conveyance, not to remove any goods from the conveyance and to remain with the conveyance for the duration of the search.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

28. Power to examine goods

Summary

This section authorises a customs officer to examine goods being imported, exported or otherwise under customs control. Examination of goods (whether declared to customs or not) is a standard part of customs controls and a clear requirement under Union customs rules.

Subsection (2) takes account of the EU Single Market and reflects the fact that the control arrangements only apply to intra-Union traffic in certain circumstances.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

28. Power to examine goods (cond.)

Details

Subsection (1) authorises an officer of customs to examine any goods that have been imported, declared for export or are otherwise under customs control.

Subsection (2) takes account of the EU Single Market and reflects the fact that the power to examine goods under subsection (1) only applies to intra-Union traffic in certain circumstances.

Subsection (3) provides that a customs officer may require goods to be moved to a suitable place for examination, that the importer or exporter or agent of the goods open and unpack goods for examination, that other facilities be provided to enable examination and that samples may be taken. Any costs incurred are borne by the importer or exporter of the goods, as the case may be.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

29. Power to search premises or land

Summary

This section authorises an officer of customs, accompanied by such other customs officers and such other persons as the officer considers necessary, to enter and search a specified premises or land under a search warrant issued by a judge of the District Court.

The section provides that an officer may seize and detain anything found in the course of the search which appears to be something which might be required as evidence in proceedings under the Customs Acts or any other enactment.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

29. Power to search premises or land (cond.)

Details

Subsection (1) allows a judge of the District Court to issue a warrant for the search of any premises or land on which there are reasonable grounds to suspect there are concealed or kept, any goods liable to forfeiture under the Customs Acts, or records relating to transactions in contravention of the Customs Acts.

Subsection (2) provides that within one month of the issue of the warrant, a named customs officer, accompanied by such other customs officers and such other persons as the officer considers necessary, may enter the specified premises or land and carry out certain searches, seize goods and records, and to detain records for as long as is reasonably necessary, etc.

Subsection (3) defines the two terms: land and structure used in the section.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

30. Power to search persons

Summary

This section provides for the search, with reasonable cause, of a person at or in the vicinity of any port or airport, or the land frontier, the coast, or ~~on~~ any premises or land the subject of a search warrant issued under *section 29* or on board a conveyance that has been boarded by a customs officer under the provisions of *section 27*.

The section provides that a customs officer may seize and detain anything found in the course of the search which appears to be something which might be required as evidence in proceedings for an offence under the Customs Acts or any other enactment.

The section provides for several safeguard criteria in relation to the search of the person. It also reflects, in *subsection (5)*, the current practice to hand over to the Garda Síochána a person suspected of internal concealment of drugs or other thing.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

30. Power to search persons (cond.)

Details

Subsection (1) provides that a customs officer may, with reasonable cause, search , and if necessary detain, a person who is at or in the vicinity of a port or airport or the coastline or the land frontier or who is on a premises or land being searched under a warrant issued under *section 29*, or on board a conveyance that has been boarded by a customs officer under the provisions of *section 27* (for example, a vessel in the contiguous zone of the State, that has been boarded by the customs officer).

Subsection (2) puts in place certain safeguards and conditions attaching to the search under subsection 1, for example, that the person being searched understands the reason for the search, and that searches by an officer or other person (who is not a registered medical practitioner or a registered nurse) of another sex require the consent of the person being searched.

Subsections (3) and (4) provide that a person to be searched under this section may be required to accompany a customs officer to a suitable place for the conduct of the search and that the customs officer may arrest without warrant a person if they refuse to do so. Such search must be carried out as soon as it is practicably possible.

Subsection (5) provides that, where a person is suspected of internal concealment of controlled drugs—or other thing, a customs officer may detain the person and bring and present that person to a member of the Garda Síochána as soon as practicable.

Subsection (6) provides definitions of certain terms used in the section.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

31. Powers relating to persons entering or leaving State

Summary

This section authorises an officer of customs to stop and question a person entering or leaving the State with regard to their journey, their identity, their usual place of residence and their actual or intended address within the State, as well as with regard to their baggage. It also authorises the officer to search such baggage.

Stopping and questioning persons entering or leaving the State, and examining their baggage where appropriate, are essential powers to prevent smuggling.

Subsection (2) takes account of the EU Single Market and reflects the fact that the powers only apply to intra-Union passengers in certain circumstances.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

31. Powers relating to persons entering or leaving State (cond.)

Details

Subsection (1) authorises a customs officer to stop any person entering or leaving the State and question that person with respect to –

- ▮ the person's arrival or departure,
- ▮ the person's identity, usual place of residence and actual or intended address within the State, and
- ▮ the person's baggage, its contents or brought by that person for whatever means.

It further authorises the officer to examine any such baggage or thing.

Subsection (2) takes account of the EU Single Market and reflects the fact that this power only applies to intra-Union passengers in certain circumstances.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

32. Power of arrest

Summary

This section provides that, where an officer of customs has reasonable grounds to suspect that a person is committing or has committed an offence under *section 14* or *section 15*, then the officer may arrest such person without warrant.

A person assaulting a customs officer may also be arrested.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

32. Power of arrest (cond.)

Details

The section provides that where a customs officer has reasonable grounds to suspect:

- a) that a person is committing or has committed an offence under *section 14 or 15*, or
- b) that the person is assaulting or has assaulted a customs officer,

then the officer may arrest that person without warrant.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

33. Power to detain goods and conveyances

Summary

This section gives a customs officer, on reasonable grounds of suspicion, the power to detain goods and conveyances being imported or exported, pending the outcome of enquiries and investigations into whether the goods in question are in compliance with the Customs Acts.

Subsection (4) provides that a customs officer may detain any goods being imported or exported that he or she has reasonable grounds to suspect might be required as evidence in any criminal proceedings under any enactment other than the Customs Acts and to place such goods in the custody of the Garda Síochána or other appropriate authority for the purpose of such proceedings.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

33. Power to detain goods and conveyances (cond.)

Details

Subsection (1) gives a customs officer the power to detain goods pending completion of an investigation into whether the goods being imported or exported are in compliance with customs law.

Subsection (2) gives a customs officer the power to detain the conveyance in which the goods are transported.

Subsection (3) specifies that after a period of 30 days or whenever the necessary enquiries are completed, whichever is the earlier, the goods, together with any conveyances or things detained with them shall be either seized as liable to forfeiture under the Customs Acts, or released, as appropriate.

Subsection (4) authorises a customs officer to detain goods being imported or exported which he or she suspects may be required as evidence in any criminal proceedings under any enactment other than the Customs Acts. Any such goods are to be placed in the custody of the Garda Síochána or other appropriate authority for the purposes of such proceedings.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

34. Power to seize goods and conveyances

Summary

This section gives an officer of customs the power to seize any goods and conveyances that are liable to forfeiture under the Customs Acts.

Such goods and conveyances may be kept in the custody of an officer of the Commissioners and may also be kept in a secure premises or place designated by the Commissioners for such purpose.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

34. Power to seize goods and conveyances (cond.)

Details

Subsection (1) provides that any goods or conveyances that are liable to forfeiture under the Customs Acts may be seized by a customs officer.

Subsection (2) provides that any goods, or conveyances so seized may be kept by an officer of the Commissioners or in any secure premises or place designated by the Commissioners for such purpose.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

35. Power to deal with seizures, before and after condemnation

Summary

This section gives the Commissioners the power to restore seized goods to a claimant prior to their condemnation by the courts.

The section further gives the Commissioners power to return goods to a claimant prior to court proceedings on payment of a sum not exceeding the value of the goods plus any duty or tax payable thereon. If such goods are subsequently found by a court to be not liable to forfeiture, then the claimant may be reimbursed that sum less any duty or tax payable.

Following condemnation of goods as forfeit by a court, they must be either sold or destroyed or otherwise disposed of in such manner as the Commissioners may direct.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

35. Power to deal with seizures, before and after condemnation (cond.)

Details

Subsection (1) gives the Commissioners the power, in their discretion, to restore anything seized as liable to forfeiture under the Customs Acts.

Subsection (2) gives the Commissioners the power, prior to the condemnation of the goods by a court, to return them to the claimant, on receipt of a notice in writing to the Commissioners of a claim to the goods so seized under *section 19* of this Act and on payment by the claimant of a sum not exceeding that which in the opinion of the Commissioners represents the value of the goods, including any duty or tax chargeable on it which has not been paid or, if the goods seized are in the opinion of the Commissioners of a perishable or hazardous nature, to sell or destroy them.

Subsection (3) provides that, where anything is delivered up, sold or destroyed under *subsection (2)*, it is held by the court in condemnation proceedings that the thing was not liable to forfeiture at the time of its seizure, then the Commissioners on demand and subject to any deductions under *subsection (4)*, will reimburse the claimant accordingly.

PART 4 – POWERS OF OFFICERS OF CUSTOMS

35. Power to deal with seizures, before and after condemnation (cond.)

Subsection (4) provides that where the amount to be reimbursed under *subsection (3)* includes any sum on account of any duty or tax chargeable on the goods which has not been paid before its seizure, the Commissioners may deduct from the amount so much of it as represents the duty or tax

Subsection (5) provides that where the claimant accepts any amount tendered under *subsection (3)*, the claimant shall not be entitled to maintain proceedings in any court on account of the seizure, detention, sale or destruction of the thing concerned.

Subsection (6) provides that all goods seized by an officer of customs as liable to forfeiture shall after condemnation of such goods be either sold or destroyed or otherwise disposed of in such manner as the Commissioners may direct.

PART 5 – ADMINISTRATION

PART 5 - ADMINISTRATION

Overview

This Part deals with general customs administrative matters. Most of the sections are standard provisions in legislation relating to the Commissioners for the purposes of the Customs Acts. They provide that:

- ▮ the duties of customs are under the care and management of the Commissioners who may authorise customs officers to carry out various functions in connection with these duties;
- ▮ certain powers, functions or duties may be delegated to an officer of the Commissioners and
- ▮ the Commissioners and the Minister for Finance, respectively, may make regulations for the purposes of giving effect to the Customs Acts.

PART 5 – ADMINISTRATION

36. Duties of customs

Summary

This section provides that the duties of customs are under the care and management of the Commissioners. It also confirms that the Commissioners are the customs authority for the purpose of the Customs Code.

PART 5 – ADMINISTRATION

36. Duties of customs (cond.)

Details

Subsection (1) provides that all Commissioners and that the Commissioners are the customs authority for the purpose of the Customs Code.

Subsection (2) provides that the Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for duties of customs in the like and in as full and ample a manner as they are authorised to do in relation to any other duties and taxes under their care and management.

PART 5 – ADMINISTRATION

37. Authorisations

Summary

This section provides that the Commissioners may authorise officers of the Commissioners to be officers of customs and that they may also revoke such authorisations.

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PART 5 – ADMINISTRATION

37. Authorisations (cond.)

Details

Subsection (1) provides that the Commissioners may:

- authorise any officer of the Commissioners to be an officer of customs, and
- ▮ authorise such officers and other persons for collecting, receiving, managing and accounting for any duties of customs and for functions in connection with the application of prohibitions and restrictions on the importation and exportation of goods and for any other function deemed necessary by the Commissioners as are not required to be authorised by some other authority,

and the holders of such authorisations have the power to execute the duties of their respective offices in every part of the State.

Subsection (2) provides that all such authorisations shall continue in Commissioner.

Subsection (3) provides that the Commissioners may revoke an authorisation made under the section.

PART 5 – ADMINISTRATION

38. Exercise of functions

Summary

This section allows for the delegation of certain powers, functions or duties by the Commissioners to an officer of the Commissioners

PART 5 – ADMINISTRATION

38. Exercise of functions (cond.)

Details

Subsection (1) provides that any act or thing required or permitted by the Customs Acts to be done by the Commissioners in relation to duties of customs may be done by any one Commissioner.

Subsection (2) provides that any power, function or duty conferred or imposed on the Commissioners by the Customs Acts (other than under *sections 6, 39 and 41*) may be exercised or performed on their behalf, and subject to their direction and control, by an officer of the Commissioners authorised by them in writing for that purpose.

PART 5 – ADMINISTRATION

39. Regulations

Summary

This section provides that the Commissioners may make any necessary Regulations, which are to be laid before Dáil Éireann, for the purposes of giving effect to the Customs Acts.

The section also provides that the Minister for Finance may make regulations relating to customs controls at the land frontier.

The section also makes it an offence to contravene or fail to comply with any provision of any regulation made under the section and provides for a €5,000 fine on summary conviction.

PART 5 – ADMINISTRATION

39. Regulations (cond.)

Details

Subsection (1) gives the Commissioners the authority to make certain regulations in connection with the application of the Customs Acts as follows:

- a) securing, paying, collecting, remitting or repaying of duties of customs;
- b) the procedures relating to conveyances, goods, crew and passengers and their baggage on their arrival in the State and departure from the State;
- c) applying any of the provisions of the Customs Acts to:
 - (i) pipelines and goods conveyed in or discharged from or charged into pipelines,
 - (ii) cables and electricity transmitted by such cables, or
 - (iii) postal packets in cross-border mail.

PART 5 – ADMINISTRATION

39. Regulations (cond.)

Subsections (2) provides that the Minister for Finance may make the necessary regulations in relation to the customs controls to apply to the importation into or exportation from, the State of goods by land.

Subsection (3) Details in particular what the regulations may cover.

Subsection (4) provides that regulations under this section may include any incidental, supplementary and consequential provisions as appear to the Commissioners or the Minister for Finance to be necessary to give full effect to the Customs Acts.

Subsection (5) provides that all regulations under this section shall be laid before Dáil Éireann.

Subsection (6) makes it an offence to fail to comply with regulations made under the section, where it is stated in the regulations to be a penal provision and *subsection (7)* provides for a penalty of €5,000 on summary conviction for such offence.

Subsection (8) contains definitions of the two terms, cable and pipeline used in the section.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

Overview

This Part deals with EU and international customs obligations. It provides for:

- ▮ penalties for the contravention of certain customs rules and procedures;
- ▮ the continuation of the force of law in Ireland, in respect of the Naples II Convention, which governs mutual assistance between EU customs authorities in relation to criminal matters;
- ▮ the application by Ireland of the 2009 EU Council Decision on the use of information technology for customs purposes;
- ▮ controls of cash entering or leaving the European Union through the State and lastly,
- ▮ the transposition into national law of the EU Council Convention of 10 May 2009 on centralised customs clearance, concerning the allocation of national collection costs when customs duties are made available to the EU budget.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

40. Administrative penalties for contravention of Customs Acts

Summary

This section provides for a system of administrative penalties for contravention of certain customs rules and procedures.

Administrative penalties are not intended to be used in offences such as serious fraud and smuggling. Other provisions of the act will apply in such circumstances as seizure, condemnation and prosecution under customs legislation.

40. Administrative penalties for contravention of Customs Acts (cond.)

Details

Subsection (1) specifies the breaches of customs law that will incur administrative penalties and also specifies the amount of the different penalties to be imposed in each case.

Subsection (2) provides for cases where corporate entities are liable for an administrative penalty.

Subsection (3) provides that any penalty payable under the section is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Commissioners.

Subsection (4) invokes the appeals provisions of the Taxes Consolidation Act 1997 to the collection of penalties under the section rather than the general customs appeal provisions in Part 7 of the Act.

Subsection (5) provides that nothing in the section shall prevent any action or proceedings being otherwise brought for the collection or recovery of duties of customs.

Subsection (6) provides for definition of two terms used in the section.

41. Naples II Convention and CIS Decision

Summary

This section provides for the application by the State of certain EU instruments in relation to co-operation between Member States in combatting customs offences.

The section confirms the continuing application of the Naples II Convention on mutual assistance in customs matters, which was originally ratified in the Customs and Excise (Mutual Assistance) Act 2001.

The section provides for the application of certain aspects of a Council Decision on the use of the Customs Information System (CIS) which is used in connection with customs offences.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

41. Naples II Convention and CIS Decision (cond.)

Details

Subsection (1) confirms the continuing application of the Naples II Convention, which was originally ratified by the State in the Customs and Excise (Mutual Assistance) Act 2001. The 2001 Act is being repealed by the current Act.

Subsection (2) designates the Commissioners as:

- ▮ the national competent authority for the purposes of certain articles of the CIS Council Decision and
- ▮ the competent customs administration for the purposes of Article 10 of that Decision.

Subsection (3) designates the Data Protection Commissioner as the national supervisory authority for the continuing purposes of Naples II and for the purposes of CIS.

Subsection (4) applies the provisions of the Data Protection Acts as well as any necessary modifications in relation to personal data, to the application of Naples II and the CIS Decision.

Subsection (5) provides that section 7 of the Data Protection Act 1988 shall apply as regards the liability of the State for injury caused to a person through the use of the CIS in the State, and for injury caused to a person through the processing of data communicated in the State, respectively.

41. Naples II Convention and CIS Decision (cond.)

The data protection elements of Subsections (4), (5) and (10) are now provided for in the Data Protection Act 2018

Subsection (6) provides for certain opt-outs in respect of some provisions of the Naples II Convention, namely, cross-border hot pursuit, cross-border surveillance, covert investigations.

Subsection (7) provides that the State may, at some future date, opt-in to the provisions mentioned in *subsection (6)*.

Subsections (8) and (9) provide for regulation-making powers for the Minister for Finance.

Subsections (11) and (12) provide for the role of the Court of Justice of the European Union in relation to matters of interpretation of the Naples II Convention.

Subsection (13) provides that judicial notice shall be taken of any ruling or decision of, or expression of opinion by, the Court of Justice of the European Union on any question as to the meaning or effect of any provision of the Naples II Convention or CIS Decision.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

41. Naples II Convention and CIS Decision (cond.)

Subsection (14) provides that drafts of orders made under this section (for example, cross-border hot pursuit, cross-border surveillance, covert investigations) shall be laid before each house of the Oireachtas and regulations shall not be made until they are approved by each such house.

Subsection (15) defines certain terms used in the section.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

42. Controls of cash entering or leaving European Union through the State

Summary

This section provides for controls of cash entering or leaving the European Union through the State.

The purpose of the section is to provide in national primary legislation for the application of Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving European Union.

42. Controls of cash entering or leaving European Union through the State (cond.)

Details

Under the original statutory instrument, and now the new section, persons entering or leaving the EU are required to make a written declaration to customs if they are carrying cash of a value of €10,000 or more and customs may seize such cash if it is not so declared. This is aimed primarily as an anti-money laundering measure. Existing EU anti-money laundering legislation is focussed on electronic transfers of funds and this current provision aims to complement such measures in respect of the physical movement of cash.

Subsection (1) designates the Commissioners as the competent authority to apply cash controls under the “2005 Regulation” (i.e. Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005).

Subsection (2) provides that any natural person entering or leaving the European Union and carrying cash of a value of €10,000 or more is obliged to make a declaration to the competent authority. For people entering or leaving the EU through the State, the declaration is to be made in writing to Customs.

Subsection (3) provides that a customs officer may seize and detain any cash worth not less than €10,000 that is being imported into, or exported from, the European Union through the State in contravention of the 2005 Regulation and this section.

42. Controls of cash entering or leaving European Union through the State (cond.)

Subsection (4) provides that, for the purposes of checking if a person has complied with the obligation to declare cash in excess of €10,000, a customs officer may question the person and search the person's baggage.

Subsection (5) provides that, in certain circumstances, a customs officer may search a person suspected of not declaring cash and that the provisions of *section 30(2), (3), (4) and (6)* shall apply to the carrying out of such a search under this section.

Subsection (6) provides that where it is intended to prosecute for an offence under *subsection (7)*, cash seized by virtue of this section may continue to be detained until the prosecution is finally determined.

Subsection (7) provides that a person who fails to make a correct and complete declaration as required by *subsection (2)* commits an offence and is liable on summary conviction to a fine of €5,000.

Subsection (8) provides that references to the "2005 Regulation" means Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005.

Subsection (9) provides that a word or expression that is used in this section and is also used in the 2005 Regulation has the same meaning in this section as it has in that Regulation.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

43. Council Convention on centralised customs clearance

Summary

Section 43 provides for the ratification by Ireland of the EU Convention of 10 March 2009 concerning the allocation of national collection costs when customs duties are made available to the EU budget.

This Convention, which had already been signed by Ireland, is now being formally transposed into national law in order to allow for its subsequent ratification in accordance with the provisions of Article 7(2) thereof. Once the Convention is formally ratified by the State, it will be able Ireland to participate fully in the centralised clearance arrangements under the Customs Code and to benefit financially.

PART 6 – EU AND INTERNATIONAL OBLIGATIONS

43. Council Convention on centralised customs clearance (cond.)

Details

Subsection (1) states that the Convention shall have the force of law in the State and judicial notice shall be taken of it.

Subsection (2) designates the Commissioners as the authorising customs authority and the assisting customs authority for the purposes of Articles 3, 4 and 5 of the Convention.

Subsection (3) defines the term Convention for the purposes of this section.

PART 7 – CUSTOMS APPEALS

PART 7 – CUSTOMS APPEALS

Overview

This Part which comprises of sections 44 to 49 provide for the conditions and procedures for the making of an appeal to the Revenue Commissioners in relation to customs decisions and assessments of customs duty.

The sections provide for an appeal mechanism in respect of decisions of the Commissioners on certain customs matters. In line with European Union law, (the Union Customs Code and its associated Delegated Regulation and Implementing Regulation) the appeal process has two stages. First, an appeal is made to the Revenue Commissioners against the decision. If the appellant is not satisfied with the outcome of that appeal, he or she may make a further appeal to the Appeal Commissioners whose determination, shall be final and conclusive unless a case is required to be stated in relation to it in the High Court on a point of law.

PART 7 – CUSTOMS APPEALS

44. Definitions

This section contains definitions of terms used in relation to Appeals in this Part of the Act.

PART 7 – CUSTOMS APPEALS

45. Appeal to Commissioners

Overview

This section deals with appeals made to the Revenue Commissioners.

PART 7 – CUSTOMS APPEALS

45. Appeal to Commissioners (cond.)

Details

Subsections (1) (2) and (3) specify the circumstances in which an appeal may be made to the Revenue Commissioners.

Subsection (4) states that an appeal must be in writing and must specify in detail the grounds for the appeal. It also specifies the time limits within which an appeal can be lodged. The European Union (Customs Code) Regulations 2016, amend the *subsection (4)* to bring the Act in line with the Union Customs Code.

PART 7 – CUSTOMS APPEALS

46. Determination of appeal

Summary

This section deals with the determination of appeals.

PART 7 – CUSTOMS APPEALS

46. Determination of appeal

Details

Subsection (1) indicates the time limit within which an appeal shall be determined.

Subsection (2) and (3) state that the Revenue Commissioners may appoint “designated officers” for the purposes of determining appeals, that only one designated officer shall determine an appeal and that a designated officer may not determine an appeal against a decision made by him or her.

Subsection (4) requires the Revenue Commissioners to notify the appellant in writing of the outcome of the appeal and the reasons for the decision.

Subsection (5) states that if an appeal which has been lodged with the Revenue Commissioners has not been determined by the Revenue Commissioners within the period referred to in *subsection (1)* then it shall be deemed that a determination has been made by the Revenue Commissioners that the appeal was not upheld but such deeming will cease to have effect if a subsequent determination is made by the Revenue Commissioners in respect of the matter concerned before a determination is made by the Appeal Commissioners under section 47 of the Act. Section 47 has been replaced by section 949AJ of the Taxes Consolidation Act 1997.

PART 7 – CUSTOMS APPEALS

47. Appeal Commissioners

Summary

This section deals with appeals made to the Appeal Commissioners where a person is aggrieved with an appeal decision by the Revenue Commissioners under *section 45*.

PART 7 – CUSTOMS APPEALS

47. Appeal Commissioners

Details

Subsection (1) specifies the circumstances in which an appeal may be made to the Appeal Commissioners and determined by the Appeal Commissioners. Section 47 (1) has been replaced by “A person aggrieved by a determination of the Commissioners made under section 46 may appeal the determination to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notice of that determination.”

Subsection (2) provides that an appeal must be in writing and specify the detailed grounds for appeal and specifies the time limits within which an appeal can be lodged.

Subsection (3) states that certain provisions of the Taxes Consolidation Act, 1997 relating to appeals shall also apply to appeals under this section.

PART 7 – CUSTOMS APPEALS

48. Effect of lodgement of appeal on decision to which appeal relates

Summary

The section details the effect of lodging an appeal and outlines the decisions the Revenue Commissioners may make in respect of that appeal.

Details

Subsection (1) states that lodging an appeal shall not cause the implementation of the decision to which the appeal relates to be suspended.

Subsection (2) states that the Revenue Commissioners shall, however, suspend implementation of decisions in circumstances as outlined in the section.

Subsection (3) requires that, unless it causes severe financial problems, a security must be provided in cases where a suspension of the implementation of a decision concerns a charge to import duties or export duties.

Subsection (4) states that where a liability to import duty or export duty or compliance with a decision is the subject of, or is likely to be the subject of, criminal proceedings, then an appeal may not be brought under *sections 45* or *47* until the criminal proceedings are determined or a decision is taken not to initiate criminal proceedings in such instance.

PART 7 – CUSTOMS APPEALS

49. Service of notices and determinations

Summary

This section contains provisions relating to the serving of notices or documents in connection with appeals. Section 49 (1) “or 47” has been deleted.

PART 7 – CUSTOMS APPEALS

49. Service of notices and determinations

Details

Subsection (1) makes provision for the serving of notices, documents, etc.

Subsection (2) specifies how *prima facie* evidence of any notice served under this section may be given in court proceedings.

PART 8 – MISCELLANEOUS

This Part deals with a number of miscellaneous provisions as follows:

- ▮ section 50 restates and modernises the existing legislation applying customs law to prohibited or restricted goods on their import into, or export from, the State;
- ▮ section 51 provides for the charging of interest arising from late payment of customs duties, and lastly
- ▮ section 52 provides that the Act amends section 1078 of the Taxes Consolidation Act 1997 in respect of Revenue offences.

PART 8 – MISCELLANEOUS

50. Prohibited or restricted goods on importation or exportation

Details

This section provides that any goods, which are subject to any prohibition or restriction on importation or exportation in any enactment, are prohibited or restricted goods for the purposes of the Customs Acts and the provisions of the Customs Acts shall apply to those goods.

The section enables customs to use their powers – for example, to stop, search, examine or seize – to enforce such prohibitions and restrictions.

51. Interest

This section of the Act has been deleted by virtue of regulation 2 (e) of the European Union (Customs Code) Regulations 2016.

PART 8 – MISCELLANEOUS

52. Amendment of section 1078 (Revenue Offences) of the Taxes Consolidation Act 1997

Summary

This section provides for the amendment of section 1078 of the Taxes Consolidation Act 1997. Section 1078 of the 1997 Act relates to Revenue offences.

PART 8 – MISCELLANEOUS

52. Amendment of section 1078 (Revenue Offences) of the Taxes Consolidation Act 1997 (cond.)

Details

The new section makes two amendments to section 1078 of the Taxes Consolidation Act 1997, as follows:

Paragraph (a) substitutes paragraph 1078(2)(d) of the Taxes Consolidation Act 1997 so as to expand it to provide for an additional offence in relation to the issuing or production of an incorrect invoice, receipt, instrument or other document in connection with the importation into or exportation from the State of any goods that are subject to a prohibition or restriction on the importation or exportation of such goods.

Paragraph (b) substitutes paragraph 1078(2)(j) of the Taxes Consolidation Act 1997 so as to expand it to provide for an offence where an officer of the Commissioners is obstructed, impeded, assaulted or interfered with in the exercise or performance of his or her powers or duties for the purpose of any tax or in connection with the importation into or exportation from the State of any goods in contravention of any prohibition or restriction on the importation or exportation of such goods.

The substituted paragraph 1078(2)(j) of the Taxes Consolidation Act 1997 additionally provides that it is an offence to attempt to coerce or intimidate any officer of the Commissioners or other person, in connection with the performance of powers or duties under the Taxes Acts.

SCHEDULES

Overview

There are 2 Schedules to the Act, as follows:-

Schedule 1 – Repeals and Revocations

This Schedule sets out the primary and secondary legislation being repealed or revoked, respectively, by *section 3* of the Act.

There are 2 Parts, as follows:-

- ▮ Part 1 - sets out the 52 Acts to be repealed, whether in whole or in part, and
- ▮ Part 2 - sets out the 26 statutory instruments to be revoked whether in whole or part.

Under *section 1(4)* of the Act the repeals and revocations will have effect on such day as the Minister for Finance may appoint by order and different days may be so appointed for each provision to be repealed or revoked.

SCHEDULES

Schedule 2 – Council Convention on Centralised Clearance

This Schedule sets out the text in the English language of the:

“Council Convention on Centralised Customs Clearance concerning the allocation of national collection costs retained when traditional own resources are made available to the EU budget”

which has been given the force of law in the State by virtue of section 43(1) of the Act.