

# LAWS OF KENYA

## The Customs and Excise Act

### CHAPTER 472

#### First Booklet

*This booklet contains the Act and subsidiary legislation made there under, or a note thereof, but excludes the First, Second, Third, Fourth and Fifth Schedules to the Act which set out the rates of import duty, suspended duty, export duty and excise duty and, in the case of the Third Schedule, exemptions from duty. These Schedules are published in a separate booklet.*

***(Revised Edition 2000 (1996))***

\*See section 235 (1) of the 1980 edition of this chapter. The provisions there set out have not been reproduced in this edition as they have become spent. The Acts referred to are the Customs Tariff Act (Cap. 472 (1972)), the Excise Tariff Act (Cap. 474 (1967)), the Customs Dumping and Subsidies Act (Cap. 473 (1962)), the Customs and Excise Department Act, 1977 (No. 8 of 1977) the Export Duty Act, 1977 (No. 10 of 1977), the Local Industries (Refund of Customs Duties) Act (Cap. 481 (1967)) and s. 11 of the Treaty for East African Co-operation Act (Cap. 4).

**CHAPTER 472**  
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10 of 1978,  
13 of 1978,  
06 of 1979,  
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06 of 1981,  
14 of 1982,  
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08 of 1985,  
10 of 1986,  
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08 of 1989,  
10 of 1990,  
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04 of 1993,  
06 of 1994.

Short title.

Interpretation.

13 of 1979, s. 2,  
10 of 1980, s. 2,  
10 of 1988, s. 2,  
08 of 1989, s. 2,  
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## CHAPTER 472

### THE CUSTOMS AND EXCISE ACT

*Commencement: 13th October, 1978*

**An Act of Parliament to provide for the management and administration of the customs, for the assessment, charge and collection of customs and excise duties and for matters relating thereto and connected therewith**

#### PART I—PRELIMINARY

1. This Act may be cited as the Customs and Excise Act.

2. (1) In this Act, except where title context otherwise requires-

"**agent**" in relation to an aircraft, Vessel or vehicle includes a person who notifies the proper officer in writing that he intends to act as the agent and who, or on whose behalf a person authorized by him, signs any document required or authorized by this Act to be signed by an agent:

Provided that the owner of an aircraft, vessel or vehicle, if resident or represented in Kenya, shall either himself or through his representative be deemed to be the agent for all the purposes of this Act if no agent is appointed;

"**aircraft**" includes every description of craft used in aerial navigation;

"**approved**" means approved by the Commissioner;

"**approved place of loading**" and "approved place of unloading" mean a quay, jetty, wharf or other place, including any part of a port or customs airport, appointed by the Commissioner by notice in accordance with section 9 to be a place where goods may be loaded or unloaded;

"**beer**" includes ale, porter and any other description of beer and any liquor including beer substitute, which is produced as a result of the alcoholic fermentation of an extract derived from barley malt, a cereal grain, starch or saccharine matter and hops or hops substitute, in portable water with other

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substitute ingredients and which contains more than two per centum of proof spirit but does not include

- (a) traditional intoxicating liquor as defined in the Traditional Liquor Act: or
- (b) any kind of beer which the Minister may by order exclude from the provisions of this Act;

**"boarding station"** means a place appointed by the Commissioner by notice in the Gazette to be a place for aircraft or vessels arriving at or departing from a port or place to bring to for the boarding by or the disembarkation of officers;

**"bonded factory"** means the premises licensed by the Commissioner for the manufacture of goods for export under bond:

**"bonded warehouse"** means a warehouse licensed by the Commissioner under section 51 for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused and includes a duty free shop;

**"brewer"** means the holder of a valid licence to brew beer under section 91:

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**"buying commission"** means fees paid or payable by an importer to his agent for the services of representing the importer in the purchase of the goods being appraised;

**"by authority"** means by the authority of the Commissioner or of any officer doing his duty in the matter in relation to which the expression is used;

**"cargo"** includes all goods imported, exported or carried coastwise in an aircraft, vessel or vehicle other than goods which are required as stores for consumption or use by or for that aircraft, vessel or vehicle, its crew and passengers, and the bona fide personal baggage of the crew and passengers;

**"carriage coastwise"** has the meaning assigned to it by section 81;

**"cigar"** means a cigar, cheroot or cigarillo prepared from tobacco;

**"cigarette"** means a cigarette prepared from tobacco and includes any form of tip and the paper thereof;

"**Commissioner**" means the person appointed under section 3 and for the time being having charge of the Customs and Excise Department;

"**compounded spirits**" means spirits which have been distinctly altered in character by re-distillation with, or by the addition of, flavouring matter or other materials or ingredients; and "to compound" means to prepare compounded spirits;

"**computed value**" in relation to any goods, means the value of such goods determined in accordance with Method 5 set out in the Seventh Schedule;

"**concessional loan**" means a loan with at least twenty-five per cent grant element

"**country of export**", in relation to any goods, means the country from which such goods are shipped to Kenya;

"**country of importation**" means any country or Customs territory into which goods are imported;

"**customs**" or "the customs" means the Customs and Excise Department

"**customs airport**" means an airport appointed by the Commissioner by notice in accordance with section 9 to be an airport for the purposes of this Act;

"**Customs area**" means a place appointed by the Commissioner by notice in accordance with section 9 for the deposit of goods subject to customs control;

"**Customs and excise revenue**" means amount collectable by the customs in accordance with the provisions of this Act;

"**Customs control**" means any measures taken by the Commissioner in relation to the goods specified in section 12 to ensure compliance with the provisions of this Act;

"**customs warehouse**" means a place approved by the Commissioner for the deposit of unentered, unexamined, detained or seized goods for the security thereof or pending payment of the duties due thereon:

"**denaturer**" means a person holding a licence under section 91 to denature spirits; and "to denature" means to render unfit for human consumption;

"**dissolving**" means a dissolving of materials for making a priming or colouring solution;

"**distiller**" means a person holding a licence to manufacture spirits under section 91 by distillation of a fermented liquor or by any other process; and "distillery" means his factory;

"**distillation period**" means the period prescribed by regulations for the purpose of taking account of feints and spirits produced,

"**distiller's warehouse**" means a place of security provided by a distiller and approved by the Commissioner under section 100;

"**domestic**", in relation to an article, means an article normally used in the household;

"**drawback**" means a refund of all or part of any import duty paid in respect of goods exported or used in a manner or for a purpose prescribed as a condition for granting drawback;

"**dumping duty**" means a duty imposed by an order made under section 125;

"**dutiable goods**" means goods chargeable with duty under this Act;

"**duty**" includes excise duty, import duty, export duty, levy, cess, imposition, tax or surtax imposed on goods under this Act;

"**duty free shop**" means a room or premises situated in a port and licensed by the Commissioner for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused for use as ship stores or for sale to passengers departing to places outside Kenya.

"**excisable goods**" means goods manufactured in Kenya or imported into Kenya on which an excise duty is imposed under this Act;

"**excisable value**" means ex-factory selling price or the value determined in accordance with section 127C;

**“excise duty”** means a duty of excise imposed on goods manufactured in Kenya or imported into Kenya and specified in the fifth schedule;

**“ex-factory selling price”** means the price at which goods are sold from a factory exclusive of value added tax and excise duty.

**“export”** means to take or cause to be taken out of Kenya;

**“factory”** means any premises on which a person is licensed to-

- (a) manufacture and store excisable goods;
- (b) use excisable goods in other manufactures;

**“feints”** means spirits conveyed into a receiver in a distillery entered under this Act as a feints receiver;

**“foreign port”** means a place beyond the boundaries of Kenya;

**“generally accepted accounting principles”** means the broad guidelines or detailed procedures of accounting for the time being generally accepted in a country;

**“goods”** includes all kinds of articles, wares, merchandise and livestock, and, where any such goods are sold under this Act. the proceeds of sale;

**“goods of the same class or kind”** means goods which fall within a range of goods produced by a particular industry or industrial sector and includes identical or similar goods ;

**“goods under drawback”** means goods in relation to which a claim for drawback has been or is to be made under section 151;

**“Government warehouse”** means a place provided by the Government for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused;

**“gravity”** in relation to a liquid means the ratio of the weight of a volume of the liquid to the weight of an equal volume of distilled water, the volume of each liquid being computed as at 15.55 degrees centigrade; and where the gravity of a liquid is expressed as a number of degrees that number shall be such ratio multiplied by one thousand;

**"identical goods"** means goods which-

- (i) are the same in all respects, including physical characteristics, quality, and reputation with the goods being appraised, minor differences in appearance notwithstanding;
- (ii) are produced in the same country as the goods being appraised; and
- (iii) were produced by and on behalf of the person by or on behalf of whom the goods appraised were produced;

but do not include imported goods where engineering, development work, design work, plans or sketches undertaken in Kenya were supplied, directly or indirectly, by the purchaser of those goods free of charge or at a reduced cost for use in the production and sale for the export of those goods.;

**"import"** means to bring or cause to be brought into Kenya from a foreign country;

**"import duty"** means duty imposed on goods imported into Kenya and specified in the First Schedule;

**"industrial"**, in relation to an article, means that the article has been shown to the satisfaction of the Commissioner to be made for use solely or principally as industrial apparatus, plant or machinery, or as a specialized part thereof;

**"licence"** means a valid licence issued under this Act;

**"low wines"** means spirits of the first extraction conveyed into a receiver in a distillery entered under this Act as a low wines receiver;

**"manufacture"** includes-

- (a) the production of excisable goods;
- (b) any intermediate or uncompleted process in the production of excisable goods;
- (c) the distilling, rectifying, compounding or denaturing of spirits;
- (d) the production of goods for export under bond;

**"manufactured tobacco"** means tobacco made up-

- (a) ready for smoking in a pipe, other than tobacco made up by the grower without the use of machinery;

- (b) ready for use in the making of cigarettes or cigars; or
- (c) in the form of cake, plug, roll or stick;

**"manufacture under bond"** means the production of goods under a licence issued under section 58A;

**"master"** includes a person for the time being having or taking charge or command of an aircraft or vessel;

**"materials"** means goods from which excisable goods are capable of being manufactured and any residue from a process of manufacture;

**"methylated spirits"** means spirits denatured in accordance with a formula prescribed by regulations for methylated spirits:

**"name"** includes the registered mark of an aircraft, vessel or vehicle;

**"night"** means the period between six o'clock in the afternoon of any day and six o'clock in the forenoon of the following day:

**"officer"** includes any person, other than a labourer, employed in the service of the customs or for the time being performing duties in relation to the customs;

**"official aid funded project"** means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

**"opaque beer"** means a portable beer liquor derived from fermentation of a mash of cereal grain or vegetable or grain or vegetable products with or without addition of sucrose or honey and which contains not less than two and a half per centum of absolute alcohol by volume;

**"original gravity"**, in relation to a liquid, means its gravity before fermentation;

**"owner"** in respect of any goods, aircraft, vessel, vehicle, plant or other thing, includes a person (other than an officer acting in his official capacity) being or holding himself out to be the owner, manufacturer, licensee, importer, exporter, consignee, agent, or the person in possession

of, or beneficially interested in, or having control of, or power of disposition over, the goods, aircraft, vessel, vehicle, plant or other thing;

**"package"** includes every means by which goods for conveyance may be cased, covered, enclosed, contained or packed:

**"plant"** includes utensils, presses, machinery, mills, implements, appliances and fittings;

**"point of sale"** in respect of excisable goods manufactured in Kenya means the point of delivery of the goods from the excise stockroom of a licensee;

**"Port"** means a place, whether on the coast or elsewhere, appointed by the Commissioner by notice in accordance with section 9, subject to any limitations specified in the notice, to be a port for the purpose of this Act; and, in relation to aircraft, a port means a customs airport;

**"postal article"** includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel, package or other article whatsoever in course of transmission by post;

**"Post Office"** means the Kenya Posts and Telecommunications Corporation;

**"premises"** includes any building, house, room or place;

**"Price actually paid or payable"** means the total payments made or to be made by a buyer to or for the benefit of a seller of imported goods which are the subject of a customs valuation;

**"prohibited goods"** means goods the importation, exportation, or carriage coastwise of which is prohibited under the provisions of this Act or any other written law;

**"proper officer"** means an officer whose right or duty it is to require the performance of, or to perform, the act referred to;

**"rebate"** means a reduction or diminishment of charge for duty;

**"rectifier"** means a person holding a licence to rectify spirits under section 91; and "to rectify" means to redistill spirits removed from a spirits receiver for the purpose of purifying or adding flavour;

"**rectifier's warehouse**" means a place of security provided by a rectifier and approved by the Commissioner under section 100:

"**refinery**" means a bonded warehouse licensed by the Commissioner for the treatment of oils;

"**refund**" means the return or repayment of duties already collected;

"**regulations**" includes rules and any subsidiary legislation made under this Act;

"**remission**" means the waiver of duty or refrainment from exacting of duty;

"**restricted goods**" means goods the importation, exportation or carriage coastwise of which is prohibited, save in accordance with conditions regulating it, and goods the importation, exportation or carriage coastwise of which is in any way regulated by or under this Act or any other written law;

"**similar goods**" means goods which have similar

(a) characteristics;

(b) components

(c) quality and reputation

which make them commercially interchangeable in the performance of functions

"**smuggling**" means the importation, exportation or carriage coastwise, or the removal from or into Kenya of goods with intent to defraud the customs, or to evade any prohibition of, restriction on regulation or condition as to, importation, exportation, carriage coastwise or removal, of goods;

"**specially denatured spirits**" means spirits denatured in accordance with a formula prescribed by regulations for specially denatured spirits;

"**spirits**" means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits.

"**still**" includes any part of a still;

"*suffrance wharf*" means a place, other than an approved place of loading or unloading, at which the Commissioner may, subject to such conditions as he may either generally or in any particular case impose, allow goods to be loaded or unloaded;

"*sufficient information*" in relation to the determination of any amount, difference or adjustment, means objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment;

"*sugar*", for the purpose of the Fifth Schedule, means sugar of any description, finished or unfinished, and any product of any sugar manufacturing operation containing saccharine matter, but does not include glucose, jaggery, molasses, sugar candy or exhausted sugarcane pulp, nor does it include brown sugar made by a person, and in plant and in premises, approved by the Minister, in the manufacture of which neither a vacuum pan nor a vacuum evaporator has been employed;

"*suspended duty*" means a duty specified in the Second Schedule:

"*tariff description*" means the description of goods in the third column of the First Schedule;

"*the price paid or payable*", in relation to the sale of goods for export to Kenya, means the aggregate of all payments made or to be made, directly or indirectly, by the purchaser to or for the benefit of the vendor

"*tobacco licensee*" means a person licensed to manufacture tobacco, cigarettes and cigars:

"*tonne*" means a metric tonne of 1,000 kilograms.

"*tons register*" means the tons of a ship's net tonnage as ascertained and registered according to the tonnage regulations of the Merchant Shipping Act, or in the case of a ship which is not registered under that Act, ascertained as if it were so registered;

"*transaction value*" means the price paid or payable for imported goods, as determined in accordance with the Seventh Schedule

"*transshipment*" means the movement, either directly or indirectly, of goods from an aircraft, vessel or vehicle arriving in Kenya from a foreign place, to

an aircraft, vessel or vehicle departing to a foreign destination;

"*transit*" means the movement of goods imported from a foreign place through Kenya to a foreign destination;

"*transit shed*" means a building appointed by the Commissioner by notice in accordance with section 9 for the deposit of goods subject to customs control;

"*tribunal*" means the Appeals Tribunal established under section 127E

"*uncustomed goods*" includes dutiable goods on which the full duties due have not been paid, and any goods, whether dutiable or not, which are imported, exported, carried coastwise or in any way dealt with contrary to the provisions of this Act,

"*utensil*" includes a container, tank, storage bin, receptacle or vat;

"*variable import duty*" means import duty imposed on goods imported into Kenya and specified in the Eleventh Schedule;

"*vehicle*" includes every description of conveyance for the transport by land of human beings or goods:

"*vessel*" includes every description of conveyance for the transport by water of human beings or goods;

"*voyage*" includes flight by aircraft;

"*warehoused*" means deposited in a Government or bonded warehouse with the authority of the person in charge of the warehouse;

"*warehouse keeper*" means the holder of a licence granted in respect of a bonded warehouse;

"*wash*" means the fermented liquor from which spirits are produced by distillation;

"*wharf owner*" includes an owner or occupier of an approved place of loading or unloading or of a sufferance wharf;

"*wine*" means a liquor of a strength not exceeding 50 degrees of proof which is made from fruit and sugar or from fruit and sugar mixed with any other material and which has undergone a process of fermentation and includes mead.

"*worts*" means the liquid obtained by dissolving sugar or molasses in water or by extracting the soluble portion of malt or corn in the process of brewing and any primary or colouring solution.

(2) For the purposes of this Act-

- (a) goods shall be deemed to be entered when the entry, made and signed by the owner in the prescribed manner, is accepted and signed by the proper officer and when any duty due or deposit required under this Act in respect of the goods has been paid or security has been given for compliance with this Act;
- (b) goods shall be deemed to be entered for home use when they have been declared for in Kenya, other than temporary use, and the provisions of paragraph (a) have been fulfilled;
- (c) the time of importation of goods shall be deemed to be the time at which the goods come within the boundaries of Kenya.
- (d) the time of exportation of goods shall be deemed to be-
  - (i) the time at which the carrying aircraft or vessel departs from its final position, anchorage or berth at the port or place within Kenya at which the goods are shipped for exportation;
  - (ii) in the case of goods exported overland, the time at which the goods pass across the boundaries of Kenya;
- (e) where an aircraft, vessel or vehicle arrives within Kenya from a foreign port or place, then, in relation to each port or place within Kenya at which it may arrive, it shall be deemed to have arrived from a foreign port or place;
- (f) where an aircraft; vessel or vehicle proposes to depart from Kenya to a foreign port place, then, in relation to each port or place within Kenya from which it may depart, it shall be deemed to be departing therefrom to a foreign port or place;
- (g) a reference to Kenya, shall be deemed to include a reference to an installation within the meaning of the Continental Shelf Act, whether or not situated within the territorial waters.
- (h) a reference to producing goods shall include a reference to growing or manufacturing goods and to the application of any process in the course of producing goods;

- (i) every act, matter or thing required or authorized by this Act to be done or performed by, with, to or before the Commissioner shall be deemed to be so done or performed if done or performed by, with, to or before an officer appointed by the Commissioner for that purpose;
- (j) every person employed on a duty or service relating to the customs by order, or with the concurrence, of the Commissioner shall be deemed to be the proper officer for that duty or service; and every act required by law at any time to be done by, with, to or before a particular officer nominated for that purpose shall be deemed to be so done if done by, with, to or before any person appointed by the Commissioner to act for that particular officer;
- (k) Customs warehouse rent payable in respect of goods deposited in a Customs warehouse shall be deemed to be duty;
- (l) Over and above the import duties chargeable in accordance with the First Schedule –
  - (i) an additional duty of twenty per centum shall be payable in respect of a used motor vehicles ( excluding agricultural tractors of Tariff Numbers 8701.10.00, 8701.30.00 and 8701.90.00) which are imported:  
Provided that where the vehicle (excluding a motorcycle) has been used for a period exceeding ten years the additional duty shall be twenty per centum or thirty thousand shillings, whichever is the higher,
  - (ii) an additional duty of two and a half per centum *ad valorem* or five per centum of the specific rate specified in the Schedule, shall be payable in respect of all goods entered for home use from an export processing zone as the Minister may, by notice in the Gazette, specify.
- (m) Radios and radio-cassette players or recorders shall be deemed to be unassembled when imported in Completely Knocked-Down form and where, *inter alia*-
  - (i) the diodes, resistors, transistors and similar components are unmounted;
  - (ii) the printed circuit boards are unmounted;
  - (iii) the speaker or speakers are unmounted
  - (iv) the knobs are unmounted;
  - (v) the casings are unassembled; and
  - (vi) the aerial is unmounted.where parts for the assembly of motor vehicles in a bonded

warehouse are imported separately by an approved motor vehicle assembler, the rate of duty applicable shall, notwithstanding any other provision of this Act, be that applicable to unassembled motor vehicles.

Provided that such parts shall be imported in such condition as may be prescribed by the Commissioner.

(3) The interpretation of the First Schedule shall be governed by the following principles—

(a) the titles of sections, chapters and sub-chapters are provided for ease of reference only; and for legal purposes classification shall be determined according to the terms of the heading and tariff descriptions and any relative section or chapter notes and, where the headings or notes do not otherwise require, according to the following provisions of this subsection;

(b) (i) a reference in a tariff description to an article shall be taken to include a reference to that article whether incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or unfinished article; and such a reference shall also be deemed to include a reference to that article complete or finished, or falling to be classified as complete or finished by virtue of this subsection whether imported, unassembled or disassembled;

(ii) where parts of an article are separately imported the commissioner may apply subparagraph (i) to those parts;

(iii) a reference in a tariff description to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances, and any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance; however classification of goods consisting of more than one material or substance shall be according to paragraph (c);

(c) where, by application of paragraph (b) (iii) or for any other reason, goods are *prima facie* classifiable under two or more tariff descriptions classification shall be effected as follows-

(i) the tariff description which provides the most specific description shall be preferred to tariff description providing a more general description; however where two or more tariff description each refer to part only of the materials or substances

- contained in mixed or composite goods or to part only of the items in a set put up for retail sale those tariff descriptions are to be regarded as equally specific in relation to those goods even if one of them gives a more complete or precise description of the goods;
- (ii) mixtures and composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to subparagraph (i) shall be classified as if they consisted of the materials or components which gives them their essential character, in so far as this criterion is applicable;
  - (iii) where goods cannot be classified by subparagraph (i) or (ii) they shall be classified under the heading which occurs last among those which equally merit consideration;
- (d) where goods cannot be classified in the manner provided by paragraph (a), (b) or (c) they shall be classified under the tariff description appropriate to the goods to which they are most akin;
- (e) (i) camera cases, instrument cases, gun cases drawing instrument cases, necklace cases and similar containers specially shaped or fitted to contain a specific article suitable for long-term use and imported with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith but this paragraph does not apply to containers which give the whole its essential character;
- (ii) subject to the provision of subparagraph (i), packing materials for goods therein shall be classified with the goods if they are of a kind normally used for packing such goods but this subparagraph is not applicable when such packing materials or packing containers are clearly suitable for repetitive use;
- (f) for legal purposes, the classification of goods in the tariff description of a heading shall be determined according to the terms of those tariff descriptions and any chapter notes relative to those tariff descriptions and, *mutatis mutandis*, according to this subsection, the understanding that only the tariff descriptions at the same level are comparable, and for the purposes of this subsection the relative section and chapter notes also apply, unless the context otherwise requires;
- (g) the classification of goods within a tariff description shall have regard to the wording of the heading;
- (h) where in any tariff description parts of articles are classified with

articles, mention of any of the articles in a tariff description of that heading shall be deemed to include a mention of parts of those articles, except in so far as the contrary intention appears from the wording of the tariff description;

- (i) where goods are classified according to their use either by way of general description of their use or by reference to the use intended on importation or clearance through Customs, the conditions of use shall not be taken to be fulfilled unless at the time of importation or clearance the intended direct use is proved to the satisfaction of the Commissioner;
- (j) where an alternative rate of duty is shown, the rate chargeable is that which results in the higher duty charge.`

(4) For the avoidance of doubt, the provisions of the First Schedule with respect to-tariff description and the classification of goods; units of quantities and the rules of interpretation of the Schedule set out in subsection shall apply to the Second, the Fourth and the Fifth Schedules.

## PART II--ADMINISTRATION

Provisions  
related to staff.

**3.** (1) There shall be appointed a Commissioner of Customs and Excise and such other officers as may be necessary for the administration of this Act and the efficient working of the customs, and the Commissioner so appointed shall, subject to the direction of the Minister, be responsible for the control and management of the customs and for the collection of, and accounting for, customs and excise revenue.

(2) The Commissioner may authorize any officer to exercise any of the powers conferred by this Act upon the Commissioner subject to such limitations as the Commissioner may think fit.

(3) An officer who is appointed to a permanent office or employment in the customs shall, on his appointment thereto, make and subscribe before a magistrate or commissioner for oaths, a declaration in the form set out in the Tenth Schedule.

Customs seal and flag.	<p><b>4.</b> (1) There shall be a seal of the customs.</p> <p>(2) There shall be a flag of the customs, which shall distinguish vessels employed in the service of the customs from other vessels.</p>
Officer to have power of police officer	<p><b>5.</b> For the purpose of carrying out this Act, every officer shall, in the performance of his duty, have all the powers, rights, privileges and protection of a police officer.</p>
Hours of attendance	<p><b>6.</b> (1) The working days and hours of general attendance of officers shall be such as may be prescribed by the Commissioner.</p> <p>(2) Where a person desires the attendance of an officer at a time outside the hours of general attendance, then that person shall make request therefor on the prescribed form to the proper officer at the port or place where the attendance is desired and, subject to any regulations and to the payment of the prescribed fees, the grant of the request shall not be unreasonably refused by the proper officer.</p> <p>(3) Where a person desires the attendance of an officer at any premises or place at which customs business is not normally carried on, then that person shall make request therefor on the prescribed form to the proper officer and, subject to any regulations and to the payment of the prescribed fees, the grant of the request shall be in the discretion of the proper officer.</p>
Offences by or in relation to officers	<p><b>7.</b> (1) An officer who-</p> <p>(a) directly or indirectly asks for, or takes, in connection with any of his duties a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive, or</p> <p>(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the customs is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer; or</p> <p>(c) discloses, except for the purposes of this Act or when required to do so as a witness in a court or with the approval of the Minister, information acquired by him in the performance of his duties relating to a person, firm or business of any kind, shall be guilty of an offence and liable to imprisonment for a term not</p>

exceeding three years.

(2) A person who dishonestly-

- (a) directly or indirectly offers or gives to an officer a payment or reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward; or
- (b) proposes or enters into an agreement with an officer, in order to induce him to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the customs is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer, shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

Disclosure and exchange of information.  
4 of 1993,s.3

**8.** Notwithstanding any other provisions of this Act, the Commissioner may-

- (a) disclose information to a person in the service of the Government in revenue or statistical department where the information is needed for the purposes of the official duties of that person solely for revenue or statistical purposes; and
- (b) subject to such reciprocal arrangements as may be agreed upon by him, furnish to the competent authorities of a foreign country any information, certificate, official report or other document with a view to the prevention, investigation or suppression of offences against the laws and regulations applicable to the importation or exportation of goods into or from the territory of that foreign country.

Appointment and fixing of limits of ports, customs areas etc.  
4 of 1999,s.3

**9.** (1) The Commissioner shall by notice in the Gazette appoint and fix the limits of-

- (a) ports;
- (b) customs airports;
- (c) places of loading and unloading within ports;
- (d) boarding stations;
- (e) customs areas;
- (f) sufferance wharves;
- (g) places for the landing and embarkation of persons;
- (h) places for the examination of goods (including baggage);
- (i) transit sheds;
- (j) roads or routes in Kenya over which goods in transit, or carried coastwise, shall be conveyed;

(k) entrances and exits, whether general or special, to and from any customs area, port, or airport within Kenya.

(2) An appointment made under subsection (1) may be subject to such conditions, including the provision of suitable accommodation for officers, as the Commissioner may think fit.

Provided that the private operators of transit sheds shall provide to the Commissioner, such security to cover the duties on goods deposited therein as the Commissioner may determine.

(3) The Commissioner may, in any particular case, on a temporary basis and subject to such conditions as he may think fit, permit any boarding station, area, wharf, place, road, route, entrance or exit to be used as if it had been so appointed and in that case this Act shall apply thereto as if it had been so appointed.

Accommodati  
on on Wharves

**10.** (1) A wharf owner shall provide to the satisfaction of the Commissioner-

- (a) suitable office accommodation on his wharf or sufferance wharf for the exclusive use of the officer employed at the wharf; and
- (b) such shed accommodation for the protection of goods as the Commissioner may in writing declare to be requisite.

(2) Where a wharf owner contravenes any of the provisions of this section then-

- (a) the appointment of a place of loading or unloading or a sufferance wharf may be withheld until the required accommodation is provided to the satisfaction of the Commissioner
- (b) any existing appointment may be revoked.

Offences in  
respect of  
Customs areas  
etc.  
13 of 1995, s.  
3

**11.** (1) No person or vehicle shall enter or leave a customs area, port or airport and no goods, whether dutiable or not, shall be brought into or out of any such area port or airport except through an entrance or exit appointed in accordance with section 9.

(2) No person shall enter any part of a customs area, port or airport when forbidden to do so by an officer, nor remain in such an area or port, or any part thereof, when requested to leave the area or port, or part thereof, by an officer.

(3) A person or vehicle entering or leaving, or goods which are being brought into or out of, a customs area, port or airport may be detained by an officer for the purposes of search or examination.

(4) A person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Customs  
control of  
goods.  
10 of 1997,s .2  
10 of 1990,s .2  
9 of 1992,s.3  
13 of 1995,s.4  
8 Of 1997,s. 3.

- 12.** (1) The following goods shall be subject to customs control-
- (a) all imported goods, including goods imported through the Post Office, from the time of importation until delivery for home use or until exportation, whichever first happens;
  - (b) all goods under drawback from the time of the claim for drawback until exportation;
  - (c) all goods subject to export duty from the time when the goods are brought to a port or place for exportation until exportation;
  - (d) all goods subject to restriction on exportation from the time the goods are brought to a port or place for exportation until exportation;
  - (e) all goods which are with the permission of the proper officer stored in a customs area pending exportation;
  - (f) all goods on board an aircraft or vessel whilst within a port or place in Kenya;
  - (g) all dutiable goods and excisable goods on which duty has not been paid;
  - (h) all seized goods and all goods under a notice of seizure.
- (2) Where any goods are subject to customs control then-
- (a) any officer may at any time examine those goods;
  - (b) except by authority or in accordance with this Act, no person shall interfere in any way with those goods:

Provided that the Commissioner may, permit the assembly of any vehicle, machinery or part processing of any other goods if he is satisfied that the vehicle, machinery or other goods will not lose their identity after the assembly or part processing.

(3) Where goods are subject to customs control, the Commissioner may permit the owner of those goods to abandon them to the customs; and on abandonment the goods may, at the expense of the owner thereof, be

destroyed or otherwise disposed of as the Commissioner may direct and the duty thereon shall be remitted or refunded, as the case may be.

(4) A person who contravenes subsection (2) (b) shall be guilty of an offence and liable to a fine not five hundred thousand shillings or to imprisonment for a term not exceeding three years or to a or to both and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Liability for loss, etc, through negligence of officer

**13.** Where loss or damage is occasioned to goods subject to customs control or to plant in a factory through the willful or negligent act of an officer, then an action shall lie against the Commissioner or that officer in respect thereof.

### PART III- IMPORTATION

#### *Prohibited and Restricted Imports*

Prohibited and restricted goods

**14.** (1) The goods specified in Part A of the Eighth Schedule are prohibited imports and the importation thereof is prohibited.

(2) The goods specified in Part B of the Eighth Schedule are restricted imports and the importation thereof, save in accordance with any conditions regulating their importation, is prohibited.

Power to prohibit, etc., imports.  
13 of 1978,  
Sch.

**15.** (1) The Minister may, by order published in the Gazette, amend Part A or B of the Eighth Schedule.

(2) The Minister may, by order in the Gazette-

(a) provide that the importation of any goods or class of goods shall be prohibited or shall be prohibited save in accordance with conditions which may be specified;

(b) limit the application of the provisions of the Eighth Schedule in respect of all or any of the goods specified therein, and thereupon in respect of those goods the provisions of this Act shall apply as if the goods are, or are not, as the case may be, included in the Eighth Schedule.

Exemption of goods in transit, etc.  
100 of 1980, s 2,

**16.** (1) Subject to subsection (2), sections 14 and 15 shall not apply to goods imported in transit, or for transshipment, or as stores of an aircraft or vessel, unless the goods come within item 2 of Part A of the Eighth

10 of 1966, s 2,  
10 of 1966, s 2,  
04 of 1993, s 4.

Schedule, or are goods of which the importation in transit, or for transshipment, or as stores for an aircraft or vessel, is expressly prohibited or restricting the importation of goods.

(2) Where, under subsection (1), sections 14 and 15 do not apply to goods imported in transit, or for transshipment, or as stores for an aircraft or vessel, then those goods shall be re-exported within such time and subject to such conditions as may be prescribed; and if the goods are not so re-exported, the owner thereof shall be guilty of an offence and the goods in respect of which an offence has been committed shall be liable to forfeiture.

(3) Subject to subsection (2), where the ownership of goods entered in transit is changed by virtue of a court order or for any other reasons the new owner shall be deemed to have assumed the obligation to have the goods re-exported within the prescribed period.

#### ***Arrival and Report of Aircraft and Vessels***

Procedure on arrival.

- 17.** (1) Save as provided in section 24, the master of every aircraft or vessel arriving in Kenya-
- (a) shall not, except where so allowed by the proper officer in any special circumstances, cause or permit the aircraft or vessel to land, touch at or enter any place in Kenya other than a port;
  - (b) shall, on arriving at a port, come as quickly as the conditions of the port admit up to the proper place of mooring or unloading without touching at any other place;
  - (c) shall, in proceeding to the proper place, bring to at the station appointed for the boarding of aircraft or vessels;
  - (d) shall not, after arriving at the proper place, depart therefrom except directly to some other approved place of mooring or unloading, or directly to some other port or place in Kenya, or directly on a voyage to a foreign port or place, in accordance with this Act;
  - (e) shall not, after departure on a voyage to a foreign port or place, bring to within Kenya except in accordance with this Act, or with the permission of the proper officer, or for some cause which the master explains to the satisfaction of the proper officer.
- (2) A master who contravenes this section shall be guilty of an offence.

Place of mooring, etc

**18.** The proper officer may, unless other provision is lawfully made direct at which particular part of a port or other place an aircraft or vessel shall moor or discharge its cargo.

Restriction on boarding vessels before proper officer

**19.** (1) No person except the port pilot, the health officer or other public officer in the exercise of his duties and duly authorized, shall, save with the permission of the proper officer, board a vessel before the proper officer.

(2) A person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

Report of aircraft and vessel 5 of 1998, s.3.

**20.** (1) The master or agent of an aircraft or vessel, whether laden or in ballast, shall, except where otherwise provided in regulations, within twenty-four hours after arrival from a foreign port or place at a port or other place especially allowed by the proper officer, make report of the aircraft or vessel, and of its cargo and stores, and of any package for which there is no bill of lading, to the proper officer on the prescribed form and in the prescribed manner.

(2) The report shall show separately goods which are in transit, goods for transshipment, goods which are to remain on board for other ports in Kenya and goods for re-exportation on the same aircraft or vessel.

(3) In the case of a vessel of less than two hundred and fifty tons register, the report shall, except where otherwise allowed by the proper officer, be made before bulk is broken.

(4) The proper officer may permit the master or agent of an aircraft or vessel to amend the destination, ownership or status of goods specified in the report where a change in such destination, ownership or status is intended, or to amend an obvious error in the report, or to supply an omission, which in the opinion of the proper officer results from accident or inadvertence, by furnishing an amended or supplementary report in the prescribed manner.

(5) A master or agent of any aircraft or vessel who-

- (a) fails to make report in accordance with this section;
- (b) makes a report of which any of the particulars contained therein is false; or
- (c) except with the knowledge and consent of the proper officer,

causes or permits bulk to be broken contrary to this section; or  
 (d) except with the knowledge and consent of the proper officer, at any time after arrival causes or permits any goods to be staved, destroyed, or thrown overboard, or any packages to be opened, shall, unless the contravention is explained to the satisfaction of the proper officer, be guilty of an offence and any goods in respect of which an offence contrary to this subsection has been committed shall be liable to forfeiture.

Master to answer questions

- 21.** (1) The master or agent of an aircraft or vessel—
- (a) shall answer fully and immediately all questions relating to the aircraft or vessel, its cargo, stores, baggage, crew and passengers which may be put to him by the proper officer;
  - (b) shall produce all books and documents in his custody or control relating to the aircraft or vessel, its cargo, stores, baggage, crew and passengers which the proper officer may require;
  - (c) shall, before any person, unless permitted to do so by the proper officer, disembark, deliver to the officer who boards the aircraft or vessel on arrival at a port or place, a correct list in the prescribed form containing separately the names of the passengers disembarking and of those remaining on board the aircraft or vessel, and also, if required by the officer, the names of the master and of each officer and member of the crew;
  - (d) shall, if required, deliver to the proper officer at the time of making report, the clearance, if any, of the aircraft or vessel from the port or place from which the aircraft or vessel has arrived.

(2) A master or agent who contravenes this section shall be guilty of an offence.

Goods in Transit shed, etc, deemed in aircraft or vessel Act No. 9 of 2000, s. 3

- 22.** (1) Goods which have been unloaded and landed into a transit shed or a customs area shall be deemed to be still in transit the importing aircraft or vessel until they are delivered from the transit shed or customs area; and so long as they remain therein the owners or agents of the aircraft or vessel shall continue to be responsible therefor as if the goods had not been removed from the aircraft or vessel, and the owners or agents shall be liable for payment of duty thereon if the goods are not subsequently delivered or otherwise accounted for to the satisfaction of the proper officer or for reshipment or destruction of any such goods which are condemned while still in the dry port or inland transit shed;

Provided that where the owners or agents of the aircraft or vessel fail to meet the cost of reshipment or destruction of any goods condemned as aforesaid, the operator of the transit shed shall bear the cost

(2) The owner or agent of an aircraft or vessel who fails to account for any of the goods deemed to be in the importing aircraft or vessel under subsection (1) to the satisfaction of the proper officer, within such period as may be prescribed or such further period as the proper officer may allow, shall be guilty of an offence.

(3) the owner or agent of an aircraft or vessel, or as the case be, the operator of a dry port or inland transit shed who fails to meet the cost of reshipment or destruction of any condemned goods pursuant to subsection(1) shall be guilty of an offence.

Goods reported to be unloaded.

**23.** Where goods reported for discharge at a port or place specially allowed by the proper officer are not duly unloaded and deposited in a transit shed or a customs area, then the master or agent of the aircraft or vessel shall, unless he explains to the satisfaction of the proper officer, be guilty of an offence and shall be liable to pay the duty due thereon.

Master of wreck, etc, to report.

**24.** (1) When an aircraft or vessel is lost or wrecked or is compelled to land or bring to within Kenya owing to accident, stress of weather or other unavoidable cause, the master or agent of the aircraft or vessel shall with all reasonable speed make report of the aircraft or vessel and of its cargo and stores to the nearest officer or administrative officer.

(2) Where an aircraft or vessel is found abandoned within Kenya then, unless the master or agent thereof satisfies the Commissioner that all the provisions of this Act in relation to the aircraft or vessel and its cargo and stores have been complied with, the aircraft or vessel and its cargo and stores shall be liable to forfeiture.

(3) A master or agent who contravenes subsection (1) shall be guilty of an offence.

#### *Arrival Overland*

Arrival overland

**25.** (1) A person, whether or not in charge of a vehicle and whether or not the vehicle may be conveying goods which are dutiable, arriving

overland at a frontier of Kenya from a place outside Kenya shall not, except where otherwise permitted by the proper officer, enter Kenya at any place other than at a port or place appointed under section 9 and shall before unloading than at a port or place appointed under section 9 and shall before unloading or disposing of any vehicle or goods-

- (a) report his arrival to the officer stationed at the port nearest to the point at which he crossed the frontier;
- (b) furnish on the prescribed form such information as may be required concerning any vehicle and goods;
- (c) make and subscribe a declaration as to the truth of all particulars contained in the form;
- (d) fully and immediately answer all relevant questions put to him by the proper officer;
- (e) produce all consignment notes or other relevant documents demanded of him by the proper officer;
- (f) save as otherwise provided in this Act make due entry of the vehicle goods.

(2) No vehicle or goods to which this section applies shall be removed from a customs area until after due entry thereof has been made or until permission for removal has been granted by the proper officer.

(3) The Commissioner may, subject to such conditions as may be specified, exempt any person or class of persons from the provisions of this section.

(4) A person who contravenes this section shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

***Unloading, Entry, Removal, Examination, and Delivery of Cargo***

Unloading,  
etc,  
10 of 1987, s.3

- 26.** (1) Subject to this Act, save with the written permission of the proper officer and subject to such conditions as he may impose-
- (a) no goods shall be unloaded from an aircraft or vessel arriving from a foreign port or place unless the goods have first been duly entered;
  - (b) no goods shall be unloaded or removed from an aircraft or vessel arriving from a foreign port or place at any time whatsoever except as prescribed by the commissioner;
  - (c) no goods shall be unloaded from an aircraft or vessel arriving from a foreign port or place except at an approved place of

unloading or at a sufferance wharf :

Provided that-

- (i) goods may be unloaded from the aircraft or vessel into another vessel in order to be landed; and in that case the goods shall be taken directly to and landed without delay at an approved place of unloading or at a sufferance wharf;
- (ii) with the permission of the proper officer and subject to such conditions as he may impose, goods reported for re-exportation by another aircraft or vessel may be unloaded into another aircraft or vessel pending re-exportation;
- (d) all goods which have been unloaded or landed shall be conveyed to a customs area and, if the proper officer so requires, shall be deposited in a transit shed or in customs warehouse:

Provided that goods which the proper officer may consider to be unsuited for storage in a transit shed or a customs warehouse shall be deposited in such other place as the proper officer may direct, and thereupon that other place shall, for the purpose of deposit, be deemed to be a transit shed;

- (e) no goods shall be removed from any part of a customs area or from a transit shed or a customs warehouse unless those goods have first been duly reported and entered and authority for their removal or delivery has been given by the proper office:

Provided that the proper officer may, if he considers it necessary, direct the agent of an aircraft or vessel from which goods have been landed into a transit shed or customs warehouse to remove those goods to some other place, which other place shall for the purpose be deemed to be a transit shed, selected by the proper officer and, if the agent fails to remove the goods when called upon, the proper officer may have them removed at the risk and expense of the agent;

- (f) where any goods are deposited in a transit shed, in a customs warehouse or in any place as directed by the proper officer the customs shall not be liable to any charges arising therefrom;
- (g) all goods entered for warehousing shall, after the owner thereof has entered into a bond for their warehousing, be removed by the importer by such routes, in such manner, and within such time, as the proper officer may direct to the warehouse for which they were entered and shall be delivered into the custody of the person in charge of the warehouse.

	<p>(2) A person who contravenes this section, or any of the conditions which may have been imposed by or any of the directions which may have been given by the proper officer shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.</p>
Entry of cargo.	<p><b>27.</b> (1) Save as otherwise provided in this Act, the whole of the cargo of an aircraft or vessel which is unloaded or to be unloaded shall be entered by the owner within such period after the commencement of discharge as may be prescribed, or such further period as may be allowed by the proper officer, either for-</p> <ul style="list-style-type: none"> <li>(a) home use;</li> <li>(b) warehousing;</li> <li>(c) transshipment; or</li> <li>(d) transit.</li> </ul> <p>(2) Where an entry is delivered to the proper officer, the owner shall furnish therewith full particulars supported by documentary evidence of the goods referred to in the entry.</p> <p>(3) Entries for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of the aircraft or vessel in which the goods are imported; and in that case the Commissioner may permit goods to be entered before the arrival of the aircraft or vessel.</p> <p>(4) Where goods remain unentered at the expiration of the prescribed period, or of such further period as may have been allowed by the proper officer, then the goods shall, if the proper officer so requires be removed by, or at the expense of, the agent of the aircraft or vessel in which the goods were imported to a customs warehouse.</p> <p>(5) Where goods entered for transit or transshipment under subsection (1) are not removed from the customs area within a period of thirty days from the date of entry, such goods shall be removed at the expense of the owner to a customs warehouse.</p>
Surplus stores may be entered	<p><b>28.</b> The surplus stores of an aircraft or vessel may, with the permission of the proper officer, be entered for home use or for warehousing.</p>
Provisions relating to	<p><b>29.</b> (1) Notwithstanding sections 26 and 27-</p>

mail, personal  
baggage, etc.  
Act No.4of  
1999

- (a) mail bags and postal articles in the course of transmission by post may be unloaded and delivered to an officer of the Post Office without entry;
- (b) goods which are the bona fide personal baggage of the passengers or members of the crew of an aircraft or vessel may, subject to the provisions of any regulations, be unloaded and delivered to those persons without entry:
- (c) The proper officer may permit the unloading and delivery to the owner of bullion, currency notes, coin or perishable goods without entry, subject to security being given by the owner to furnish the necessary entry within forty-eight hours of the time of delivery.

(2) An owner who contravenes the provisions of subsection (1) (c) shall be guilty of an offence.

Entry in  
absence of  
documents

**30.** (1) If the owner of goods is, by reason of the absence of any, or of any sufficient documents or information concerning them, unable to furnish full particulars of those goods, he shall make and subscribe a declaration on the prescribed form to that effect, and thereupon the proper officer may permit the owner to examine the goods in his presence.

(2) Upon examination having been made the proper officer may, subject to section 31, permit the owner to enter the goods for home use, or for warehousing, if he is satisfied that the description of the goods for tariff and statistical purposes is correctly made in the entry, and also-

- (a) in the case of goods liable to duty *ad valorem*, that the value declared on the entry is approximately correct; and
- (b) in the case of goods liable to duty according to weight, quantity, number, measurement or strength, that the weight, quantity, number, measurement or strength declared on the entry is correct.

(3) Where the proper officer has permitted entry to be made under subsection (2), the delivery of the goods may accordingly be made, but the proper officer may, in the case of goods liable to duty *ad valorem*, retain samples of the goods for such period up to the passing of perfect entry as he may think fit.

(4) Where the owner of any goods referred to in the declaration does not make, or is not permitted to make, entry thereof in accordance with this

Provisions relating to goods liable to <i>ad valorem</i> duty	<p>section, then the proper officer shall cause the goods referred to in the declaration to be deposited in a customs warehouse.</p> <p><b>31.</b> (1) Where goods entered in accordance with section 30 are goods liable to duty <i>ad valorem</i>, then the entry shall be deemed to be a provisional entry.</p> <p>(2) Where any such goods are provisionally entered for home use, then the proper officer may require the owner to deposit, in addition to the amount estimated as the duty for the purpose of making the provisional entry, such further sum as the proper officer may think fit; and the estimated duty and further sum shall be held on deposit and shall be forfeited unless the owner within three months, or such further period as may be allowed by the proper officer, of the provisional entry produces to the proper officer satisfactory evidence of the value of the goods and makes perfect entry thereof.</p> <p>(3) Where the owner makes a perfect entry in accordance with subsection (2), the proper officer shall subtract from the amount held on deposit under that subsection, the full amount of the duty payable in respect of the goods and shall refund the difference to the owner.</p> <p>Provided that where the full amount of duty payable exceeds the amount deposited, the proper officer shall require the owner to pay an additional amount of duty equal to the difference between the amount of duty payable and the amount deposited.</p>
Delivery from customs area in special circumstances	<p><b>32.</b> (1) The proper officer may, subject to such conditions as he may impose and to the giving of such security as he may think appropriate for the due return thereof or the payment of the duties thereon, permit goods to be removed from a transit shed or customs area without payment of the duty for such purpose, for such period, and in such quantities, as he may think fit.</p> <p>(2) A person who contravenes any conditions imposed under subsection (1) shall be guilty of an offence and any goods in respect of which the offence has been omitted shall be liable to forfeiture.</p>
Re-packing, etc., in customs area, etc	<p><b>33.</b> The proper officer may permit goods to be repacked, skipped, bulked, sorted, lotted or packed on an approved place of unloading, or on a sufferance wharf, or in a transit shed, or in a customs area.</p>

Goods deposited in a customs warehouse may be sold, etc.  
 10 of 1986, s. 3,  
 10 of 1988, s. 4,  
 08 of 1991, s. 3,  
 08 of 1996, s. 2,  
 06 of 1994, s. 3,  
 08 of 1997, s. 4,  
 04 of 1999, s. 5,  
 09 of 2000, s. 4.

### *Provisions Relating to Customs Warehouses*

**34.** (1) Where goods which are deposited in a customs warehouse are not removed within twenty- one days after deposit, then the proper officer shall give notice that unless such goods are removed within twenty-one days from the date of the notice, they shall be deemed to have been abandoned.

(2) Where goods are deemed to be abandoned under subsection (1), then such goods whether restricted or not, shall be sold by public auction after twenty- one days notice of sale has been given:

Provided that any such goods-

- (i) which are of a perishable nature or are animals, may, with the authority of the Commissioner, be sold without notice, either by public auction or private treaty, at any time after deposit in the customs warehouse
- (ii) which are restricted under any written law in force in Kenya may, with the authority of the Commissioner and subject to subsection (8), be sold only to persons licensed to deal in such goods or in similar goods.
- (iii) Which are imported by the government, a diplomatic mission, a state corporation, an aid agency or by the Government or a state corporation of a neighbouring country, shall not be sold except with the prior written approval of the Commissioner
- (iv) any such goods which are prohibited under the provisions of any written law for the time being in force in Kenya shall not be sold

(3) Every notice given under subsections (1) and (2) shall be advertised in such prominent manner as the Commissioner may see fit.

(4) Notwithstanding the provisions of subsection (2), the Commissioner may, upon application by the owner, made at least seven days before the date of sale, if satisfied that failure to remove the goods was due to circumstances beyond the control of the owner, allow the goods to be withdrawn from the auction sale.

(5) Goods deposited in a customs warehouse shall be subject to such rent and other charges as may be prescribed

(6) Where goods are sold under this section, the proceeds thereof shall be applied in the order set out below in the discharge of -

- (a) the duties, if any;
- (b) the expenses of removal and sale;
- (c) the rent and charges due to the customs;
- (d) the port charges; and
- (e) the freight charges, if any

(7) Where, after the proceeds of sale have been applied in accordance with subsection (6), such balance shall be paid into the Customs and excise revenue.

(8) Where goods fail to be sold in accordance with this section but are in the opinion of the Commissioner without value, or cannot be sold for any other reason, then they may be destroyed or disposed of in such manner as the Commissioner may direct.

(9) An officer having the custody of goods in a customs warehouse, or place of deposit deemed to be a customs warehouse, may refuse delivery therefrom until he is satisfied that all duties, expenses, rent, freight and other charges due in respect of those goods have been paid.

Goods deemed  
to be in a  
Customs  
Warehouse

**35.** (1) Where under this Act goods are required to be deposited in a customs warehouse, the proper officer may decide that it is undesirable or inconvenient to deposit the goods in a customs warehouse and direct that the goods shall be deposited in some other place; and thereupon the goods shall for all purposes be deemed to have been deposited in a customs warehouse as from the time that they are required to be so deposited.

(2) Where goods are deemed to have been deposited in a customs warehouse then the goods shall, in addition to the rent and other charges to which they are liable under section 34, be chargeable with such expenses incurred in the securing, guarding and removing of them as the proper officer may consider reasonable; and neither the Commissioner nor an officer shall be liable for the loss of or damage to the goods which may be occasioned by reason of their being so deposited and dealt with.

## PART IV--WAREHOUSING OF GOODS

### *Provisions Relating to Bonded Warehouses*

Dutiable goods  
may be  
warehoused

**36.** (1) Subject to any regulations, goods liable to duty may on first importation be warehoused without payment of duty in a Government warehouse or a bonded warehouse licensed by the Commissioner.

(2) On, or as soon as practicable after, the landing of goods to be warehoused, the proper officer shall take a particular account of the goods and shall enter the account in a book; and the account shall, subject to sections 41 and 47, be that upon which the duties in respect of the goods shall be ascertained and paid.

Procedure on  
warehousing  
Act.  
4 of 1999, s. 6.

**37.** (1) Where goods entered to be warehoused are delivered into the custody of the person in charge of a warehouse; the proper officer shall take a particular account of the goods, whether or not an account thereof has been previously taken.

(2) The proper officer shall, in taking an account, enter in the book for that purpose, the name of the aircraft or vessel or the registered number of the vehicle, as the case may be, in which the goods were imported, or, in the case of postal articles, the parcel post reference, the name of the owner of the goods, the number of packages, the mark and number of each package, and the value and particulars of the goods.

(3) After the account has been taken and the goods deposited in the warehouse in accordance with the direction of the proper officer, the officer shall certify at the foot of the account that the entry and warehousing of the goods is complete; and the goods shall from that time be considered goods duly warehoused.

(4) Subject to section 39, all goods entered to be warehoused shall be removed to the warehouse for which they are entered and deposited therein within twenty one days from the date of entry, or within such further period, not exceeding twenty- one days, as the Commissioner may allow for bonded warehouses situated away from the port of importation;

Provided that where goods are permitted to be repacked, skipped, bulked, sorted, lotted or packed in accordance with section 33, those

goods shall be deposited in the packages in which they were contained when the account thereof was taken.

(5) A person who contravenes subsection (4) shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Removal to warehouse of goods entered therefor.

**38.** (1) Where goods entered to be warehoused are not duly warehoused by the owner, the proper officer may cause them to be removed to the warehouse for which they were entered.

(2) Where goods are so removed to a bonded warehouse the warehouse keeper shall pay the cost of the removal of the goods and shall have a lien on the goods for the cost.

Entry of warehoused goods.

**39.** (1) Goods which have been warehoused may be entered either for-

- (a) home use;
- (b) exportation;
- (c) removal to another warehouse;
- (d) use as stores for aircraft or vessels; or
- (e) re-warehousing.

(2) Where goods have been entered for warehousing they may, before they are actually warehoused, be entered for home use, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels; and in that case the goods shall be deemed to have been so warehoused and may be delivered for home use, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels, as the case may be, as if they had been actually so warehoused.

Operations in a warehouse.  
14 of 1982, s. 3,  
09 of 1992, s. 4,  
0 4 of 1993,s. 5,

**40.** (1) Where goods are warehoused, the Commissioner may, subject to such conditions as he may impose-

- (a) permit the goods to be repacked, skipped, bulked, sorted, lotted or packed therein;
- (b) permit samples of the goods to be taken by the owner;
- (c) permit the name of the owner of the goods in the account taken under section 36 to be changed if application therefor is made in the prescribed form and signed by both the owner and the intended owner;
- (d) permit the assembly or manufacture in the warehouse of any article consisting wholly or partly of those goods; and for that

purpose the Commissioner may permit the receipt in a warehouse of duty free or locally produced articles required as components of the article to be so assembled or manufactured therein:

Provided that-

- (i) where the finished article is entered for home use, duty shall be charged on the goods forming part thereof according to the first account taken upon the warehousing of the goods except in the case of imported crude petroleum or partly-refined petroleum oils which are warehoused in a refinery, in which case duty shall be charged on the goods produced from crude petroleum or partly refined petroleum oils delivered from the refinery for home use and shall be the same as that which would be payable on the importation of similar goods; and
- (ii) in respect of blended lubricating oils, duty shall be charged on the resultant volume of the blend at the time of entry for home use and shall be the same as that which would be payable on the importation of similar goods.

(2) A person who contravenes any conditions which may be imposed by the Commissioner under this section shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Re-gauging  
and re-  
valuation.

**41.** The proper officer may, either on the direction of the Commissioner or on the application and at the expense of the owner, re-gauge, re-measure, re-weigh, examine or take stock of any warehoused goods, and in either case the duty on the goods shall be payable according to the result, unless the proper officer considers that any loss or deterioration is excessive or has been willfully or negligently caused, in either of which events the duty shall, subject to such reduction, if any, as the Commissioner may allow, be payable according to the original account

Delivery from  
warehouse in  
special  
circumstances.  
13 of 1979, s. 2,  
09 of 1992, s. 5.

**42.** (1) The Commissioner may, subject to such conditions as he may impose and to the giving of such security as he may think appropriate for the due return therefor or the payment of duties thereon, permit goods to be removed from a warehouse without payment of duty for such purpose, for such period, and in such quantities, as he may think fit.

Removal to another warehouse or bonded factory.  
10 of 1980, s. 2,  
10 of 1990, s. 4.

(2) A person who contravenes any conditions imposed under subsection (1) shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

**43.** (1) Where warehoused goods are to be removed to another warehouse or a bonded factory, then the proper officer-

- (a) shall require owner of the goods to deliver an entry thereof in such form and manner as the proper officer may direct;
- (b) shall require the owner to give security in such amount, not less than the duty chargeable on the goods, as the proper officer may think fit for the due arrival and re-warehousing of the goods within such time as the proper officer may consider appropriate; and
- (c) shall transmit to the proper officer of the place where the goods are to be re-warehoused an account containing the particulars of the goods.

(2) Security given under this section shall not be discharged unless-

- (a) the conditions attaching thereto have been satisfied; or
- (b) the full duty payable on the goods has been paid in accordance with this Act; or
- (c) the goods are otherwise accounted for to the satisfaction of the proper officer, and any duties due in respect of any deficiency in the goods not so accounted for have been paid.

(3) On the arrival of the goods at the other warehouse or bonded factory, a particular account of them shall be taken in accordance with section 37 or section 58F, as the case may be.

Warehoused goods may be delivered as stores.

**44.** (1) Where warehoused goods have been entered for use as stores for an aircraft or vessel, they may be delivered for that purpose to a vessel or aircraft proceeding to a foreign port or place:

Provided that warehoused goods shall not be entered for use as stores for a vessel of less than ten tons register or be delivered for that purpose.

(2) Where warehoused goods are delivered for the purpose of being used as stores for an aircraft or vessel, they shall forthwith be put on board the aircraft or vessel for which they are entered.

(3) Where warehoused goods are dealt with contrary to this section, the

Abandonment  
etc., of  
warehoused  
goods.

owner of the goods shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

- 45.** (1) The Commissioner may, subject to such conditions as he may impose-
- (a) permit the owner of warehoused goods to abandon the goods to the customs;
  - (b) permit the owner of warehoused goods which in the opinion of the proper officer are worthless or have become damaged, or are surplus, by reason of any operations in connection therewith carried out under section 40, to destroy the goods and in either case the duty on the goods shall be remitted
- (2) Where under subsection (1) warehoused goods are--
- (a) abandoned to the customs, then the goods shall be disposed of in the manner provided in section 34:  
Provided that, where the goods are destroyed or disposed of in some manner other than sale, the destruction or disposal shall be at the expense of the owner;
  - (b) permitted to be destroyed, and the goods were warehoused in a Government warehouse, then the owner of the goods shall nevertheless be liable to pay to the proper officer the rent and other charges due on the goods.

Period of  
warehousing  
of goods.  
08 of 1983, s. 2,  
03 of 1984, s. 2,  
10 of 1987, s. 4,  
10 of 1990, s. 5,  
10 of 1986, s. 4,  
04 of 1993, s. 6,  
08 of 1996, s.2A  
08 of 1997, s 4A  
05 of 1998, s.4,  
04 of 1999, s.4.

- 46.** (1) All warehoused goods which have not been removed from a warehouse in accordance with this Act within six months of the date on which they were entered shall be entered for re-warehousing; but those goods shall not be re-warehoused more than once:

Provided that in the case of wines and spirits warehoused by licensed excise manufactures and duty free shops, or locally assembled motor vehicles warehoused by approved motor vehicle assemblers, the Commissioner may, in addition to the period of re-warehousing permitted in this subsection, allow for further period of re-warehousing as he may deem appropriate.

- (2) Where goods required to be re-warehoused under subsection (1) are not so re-warehoused, then duty shall become due and payable and shall be paid forthwith in accordance with the account taken under section 36 and 37:

(3) Where duty becomes due and payable under subsection (2) and the owner fails to pay the duty within one month or such further period as the Commissioner may allow, from the date duty becomes due and payable, the goods shall be sold by public auction after one months notice of such sale has been given by the officer in such prominent public manner as the Commissioner may see fit:

Provided that any such goods which are of a perishable nature may, with the authority of the Commissioner, be sold by the proper officer without notice either by public auction or private treaty, at any time after the expiry of the period of re-warehousing.

(4) Where any goods are sold under this section then the proceed thereof shall be applied in the order set out below in the discharge of -

- (a) the duties, if any;
- (b) the expenses of removal and sale;
- (c) any rent and charges due to the customs; and
- (d) any rent and charges due to the warehouse keeper.

(5) Where any balance is realized after the application of the proceeds in accordance with subsection (4), it shall be paid into the customs and excise revenue.

Examination  
of warehoused  
goods on  
delivery  
8 of 1983, s. 6.

**47.** (1) Where warehoused goods are delivered for home use, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels, or are to be re-warehoused under section 46, then the proper officer may examine and take stock of the goods.

(2) Where there is a deficiency between the quantity shown by the warehouse account and that ascertained on examination, then, if the proper officer considers-

- (a) that the deficiency is not excessive or that it was not willfully or negligently caused, he may allow the deficiency and direct that the duties on the goods shall be payable, or that the re-warehousing entry shall be made, as the case may be, on the result of the examination;
- (b) that the deficiency is excessive or that it was willfully or negligently caused, he shall require the duties on the goods to be paid by the owner according to the warehouse account:

<p>Access to warehouse</p>	<p>Provided that where the goods are to be re-warehoused, the owner of the goods shall forthwith pay the duty on the deficiency and the re-warehousing entry shall be made according to the result of the examination.</p> <p><b>48.</b> (1) The proper officer shall at all times have the right of access to any part of a warehouse and may examine any goods therein; and for the purpose of obtaining access the proper officer may break open the warehouse or any part thereof, or any adjacent premises.</p> <p>(2) No person other than the proper officer or, in the case of a bonded warehouse, the warehouse keeper or a duly authorized employee, shall open a warehouse or gain access to goods therein save with the approval of the proper officer; and a person who contravenes this subsection shall be guilty of an offence.</p> <p>(3) No person shall enter a warehouse or part thereof contrary to the orders of the proper officer, or shall refuse to leave a warehouse or part thereof when directed to do so by the proper officer; and a person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings</p>
<p>Removal of goods after entry for home use, export or sale., 4 of 1993, s. 7. 5 of 1998,s. 5. 5 of 1998,s.5</p>	<p><b>49.</b> (1) Any goods deposited in a warehouse or bonded factory which are entered for home use or from export or sold in accordance with this Act shall-</p> <p>(a) in the case of goods, entered for home use or sold in accordance with this act, be removed from such warehouse or bonded factory within fourteen days of such entry or sale ,as the case may be; and</p> <p>(b) in the case of goods entered for export, be removed from the warehouse or bonded factory and exported within such longer period, not exceeding thirty days, as the Commissioner may, in any particular case, allow</p> <p>(2) Any goods which remain in a warehouse or bonded factory in contravention of this section shall be forfeited and sold or resold in accordance with the provisions of section 34.</p>
<p>Penalty for unlawfully taking, etc. warehoused</p>	<p><b>50.</b> A person who-</p> <p>(a) takes, or causes or permits to be taken, goods from a warehouse otherwise than in accordance with this Act; or</p>

goods.  
10 of 1980, s.  
2.

Commissioner  
may licence  
warehouses.  
14 of 1982, s. 4,  
04 of 1999, s. 8.

(b) willfully destroys or damages warehoused goods otherwise than in circumstances specifically provided for in this Act,

:-shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

**51.** (1) The Commissioner may on application license a premises, room or enclosed area as a bonded warehouse for the deposit of goods liable to duty; and the Commissioner may refuse to issue a licence without assigning any reason, or may by notice in writing suspend, revoke or refuse to renew a licence on the grounds stated in the notice.

(2) The Commissioner may license a premises, room or enclosed area as either-

- (a) a general bonded warehouse for the warehousing of goods generally; or
- (b) a private bonded warehouse for the warehousing only of goods which are the property of the warehouse keeper.

(3) A licence shall be in the prescribed form and shall be subject to the payment of the prescribed fee.

(3A) Where the premises, room or enclosed area licensed as a bonded warehouse under this section is owned by a company registered under the Companies Act, it shall be a condition of the licence that the company shall not change its directors except with the prior written approval of the Commissioner

(4) The Commissioner may require the person applying for a licence to furnish such security as the Commissioner may think appropriate as a condition to the grant of the licence and the Commissioner may at any time require a warehouse keeper to furnish new security in a different amount or on different terms.

(5) The Commissioner may at any time require a bonded warehouse keeper to make such alterations or additions to his bonded warehouse as the Commissioner may consider necessary to ensure the proper security or warehousing of goods.

(6) No building shall be used as a bonded warehouse unless there is in

force in relation thereto a valid licence.

(7) A warehouse keeper who uses or permits to be used his bonded warehouse in contravention of any of the terms of his licence shall be guilty of an offence.

(8) An owner or occupier of a premises, room or enclosed area who uses or permits to be used the premises, room or enclosed area as a bonded warehouse without being the holder of a valid licence in respect thereof shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings and, in addition thereto, to a fine not exceeding five thousand shillings for any day or part of a day during which the premises, room or enclosed area was so used.

Procedure on  
revocation or  
Expiry of  
licence.

**52.** (1) Where the Commissioner revokes a licence under section 51, he shall cause to be served on the warehouse keeper notice of revocation by leaving the notice with the person in charge of the bonded warehouse; and thereupon that service shall be deemed to be notice of revocation to the owners of all goods warehoused therein.

(2) Where a warehouse keeper proposes not to renew his licence in relation to a bonded warehouse, then he shall cause notice of his intention to be given to the owners of all goods warehoused therein.

(3) Where the licence in relation to a bonded warehouse has been revoked or has expired, then, within such time as the Commissioner may direct all goods warehoused therein shall be entered and delivered for home use, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels.

(4) Where goods have not been entered and delivered in accordance with subsection (3), the proper officer may cause the goods to be taken to a customs warehouse and thereupon the goods shall be dealt with in accordance with section 34.

Warehouse  
keeper to  
provide  
facilities

**53.** (1) A warehouse keeper shall-

- (a) provide office accommodation and just weights, scales, measures and other facilities for examining and taking account of goods and for securing them as the proper officer may reasonably require;
- (b) keep a record of all goods warehoused therein and keep that

record at all times available for examination by the proper officer;

- (c) stack and arrange the goods in the bonded warehouse so as to permit reasonable access to and examination of every package at all times:
- (d) provide all necessary labour and materials for the storing, examining, packing, marking, cooping, weighing and taking stock of the warehoused goods whenever the proper officer so requires:
- (e) maintain such records and accounts relating to the operations of a refinery in such form and manner as the proper officer shall require, and shall keep the records and accounts at all times available for examination by the proper officer.

(2) Where a warehouse keeper contravenes any of the provisions of this section, the Commissioner may direct that no other goods shall be warehoused by that warehouse keeper until he has, in the opinion of the Commissioner, complied with those provisions.

(3) A warehouse keeper who contravenes any of the provisions of this section or of a direction given by the Commissioner under this section shall be guilty of an offence and liable to a fine not exceeding forty thousand shillings.

Stowage and  
storage of  
goods in  
bonded  
warehouse

**54.** (1) The proper officer may direct in what parts or divisions of a bonded warehouse and in what manner goods shall be deposited therein.

(2) Subject to section 40, where goods have been warehoused in a bonded warehouse, then, except with the approval of the proper officer, the goods shall not be moved or interfered with in any way, nor shall any alteration be made in the marks or numbers of any package.

(3) A warehouse keeper who contravenes or who causes or permits a of this section shall be guilty of an offence and shall be liable to a fine not exceeding twenty thousand shillings and any goods in respect of which an offence under subsection (2) has been committed shall be liable to forfeiture.

Removal of  
goods from  
private to  
general

**55.** (1) Where the warehouse keeper of a private bonded warehouse contravenes any of the provisions of this Act, the proper officer may require him within such time as: the proper officer may direct, to

warehouse.

remove all or any of the goods warehoused in the private bonded warehouse to a general bonded warehouse or to enter and deliver them for home use, or for exportation, or for use as stores for aircraft or vessels.

(2) Where a warehouse keeper contravenes a requirement given under subsection the proper officer may cause the goods to be taken to a customs warehouse "at the expense of the Warehouse keeper" and thereupon the goods shall be dealt with in accordance with section 34.

Warehouse keeper to produce goods deposited.

**56.** (1) A warehouse keeper shall, on request, produce to the proper officer all goods deposited in his bonded warehouse.

(2) A warehouse keeper who contravenes this section shall, in the absence of satisfactory explanation to the proper officer, be guilty of an offence and liable to a fine not exceeding ten thousand shillings in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package.

#### *Provisions Relating to Government Warehouses*

Goods in Government warehouse liable to rent, etc.

**57.** Where goods are deposited in a Government warehouse, they shall be subject to such rent and other charges as may be prescribed or as may be provided for in this Act; and, if the rent and other charges, are not paid to the proper officer when lawfully demanded, the goods in respect of which the rent and other charges are due may be sold and the proceeds thereof applied in accordance with section 34.

Removal, etc., of goods in Government warehouse.

**58.** Where goods are deposited in a Government warehouse the proper officer may-

- (a) remove, at the expense of the customs, the goods from that warehouse to another Government warehouse;
- (b) perform, in relation to the goods and at the expense of the owner thereof, all acts which he may consider reasonably necessary for the proper custody and preservation of the goods:

Provided that the proper officer shall not, save where he considers immediate action necessary, perform any such act until twenty-four hours after the owner of the goods has been notified that the act is necessary;

- (c) by notice inform the owners of the goods that it is proposed to

close the warehouse at the end of a period, not being less than three months from the date of the notice, which may be specified in the notice; and in that case regulations shall be made providing for the manner in which goods shall be dealt with on the warehouse being closed.

#### **PART IV A--PROVISIONS RELATING TO MANUFACTURE UNDER BOND**

Licensing of bonded factories  
10 of 1988, s. 5,  
04 of 1993, s. 8,  
13 of 1995, s. 16

**58A.** (1) The Commissioner may, on application and with the prior approval of the Minister and subject to such conditions as the Commissioner may impose, issue a licence in the prescribed form to any person to manufacture goods under bond in specified premises; and the Commissioner may refuse to issue a licence or, by notice in writing, suspend, revoke or refuse to renew a licence on the grounds stated in the notice.

(2) Application for a licence under this section shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) A licence issued under subsection (1) shall be subject to the payment of the prescribed annual fee and shall expire on the 31st December in each year.

(4) The Commissioner may require the person applying for a licence to furnish such security as the Commissioner may think appropriate as a condition to the grant of the licence and the Commissioner may, at any time, require a licensee to furnish a new security in a different amount or on different terms.

(5) No premises shall be used for manufacturing under bond unless there is in relation thereto a valid licence.

(6) Any person who uses or permits premises to be used for manufacturing under bond without a licence, or a licensee who uses or permits his bonded factory to be used in contravention of the terms of his licence shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; and any goods in respect to which an offence has been committed shall be liable to forfeiture.

Entry of premises as bonded factories, 10 of 1988, s. 5.

**58B** (1) A licensee shall, before commencing to manufacture under bond, make entry in the prescribed form and in the prescribed manner of each building, room, place and item plant in his factory which he proposes to use in the manufacture or storage of raw materials or manufactured goods; and, in each entry, he shall specify the purpose for which each building, room, place or item of plant a to be used.

(2) A licensee shall not, in the course of manufacturing goods under bond -

- (a) make use of a building, room, place or item of plant in relation to which entry is required under this section unless there is, in respect thereof, a valid entry;
- (b) effect, without prior permission of the Commissioner, an alteration in shape, position or capacity to a building, room, place or plant.

Revocation of licence, etc. 10 of 1988, s. 5.

**58C.** (1) Where the Commissioner suspends, revokes or refuse to renew a licence under section 58A (1), he shall serve or cause to be served, in writing, on the licensee a notice to that effect.

(2) The notice referred to in subsection (1) may be served by delivering it to the licensee or by leaving it at the bonded factory or with the person in charge of the bonded factory and thereafter the notice shall be deemed to have been served.

Entry of plant, machinery, etc. for exportation or for home use. 10 of 1988, s. 5.

**58D.** (1) Where a manufacturer ceases to be licensed under section 58A, he shall enter and deliver for exportation or for removal to another bonded factory or for home use all the plant, machinery and equipment, raw materials or manufactured goods in the bonded factory within such time as the Commissioner may specify.

(2) Where on the expiry of the time specified by the commissioner under the subsection (1), the plant, machinery and equipment, raw materials or manufactured goods are not entered and delivered in accordance to the subsection (1) then the plant, machinery and equipment, raw materials or manufactured goods shall be liable to forfeiture.

Manufacturer t o provide facilities. 10 of 1988, s. 5

**58E.** (1) A manufacturer shall –

- (a) provide office accommodation and just weights, scales, measures and other facilities for examining and taking account

of goods and for secure them as the proper officer may reasonably require;

- (b) keep a record of all types of plant, machinery and equipment, raw materials and goods manufactured therein and keep that record at all time available for examination by the proper officer;
- (c) provide all necessary labour and materials for the storing, examining, packing, marking, co-operating, weighing and taking stock of the goods therein whenever the proper officer so requires.

(2) Where a manufacturer contravenes of the provisions of this section, the Commissioner may direct that the manufacturer shall cease operations until he has complied with those provisions to the satisfaction of the Commissioner.

(3) A manufacturer who contravenes any of the provisions of this section or of a direction given by the Commissioner under this section shall be guilty of an offence.

Receipt and  
storage of raw  
materials and  
manufactured  
goods.  
10 of 1988, s. 5

**58F.** (1) All raw materials, whether imported or obtained locally, received in the bonded factory shall be stored in a room of which an entry for the purpose has been made in accordance with section 58B (1) and which shall be known as the raw materials stock room.

(2) All manufactured goods shall, after the process of manufacture, be forthwith stored in a room of which entry for the purpose has been made in accordance with section 58B (1) and which shall be known as the manufactured goods stock room.

(3) All the waste from the manufacturing process and all manufactured goods which are not of the required standards or specifications shall, after the process of manufacture be forthwith stored in a room of which entry has been made for the purpose in accordance with section 58B(1) and which shall be known as the waste and rejects stock room.

(4) A stock room shall not be used for any purpose other than the purpose for which entry has been made.

(5) The raw materials and manufactured goods shall be stored in such

a way as to facilitate the easy taking of their full account.

(6) A licensee who contravenes this section shall be guilty of an offence and the raw materials or manufactured goods in respect of which an offence has been committed shall be liable to forfeiture.

Provisions relating to stock registers. 10 of 1988, s. 5,

**58G.** (1) A licensee shall keep in the prescribed manner-

- (a) a raw material stock register and shall, each day, enter therein the particulars of all receipts and deliveries of all raw materials; and
- (b) a manufactured goods register and shall, each day, enter therein the particulars of all receipts and deliveries of all manufactured goods; and
- (c) a waste and rejects stock register and shall, each day, enter therein the particulars of all receipts and deliveries of all waste and rejects.

(2) The Stock register shall be available for inspection by the proper officer at all times and the proper officer may take copies of any entry therein.

(3) A licensee who contravenes the provisions of this section shall be guilty of an offence.

Manner of dealing with deficiencies and excesses in stock rooms 10 of 1988, s. 5

**58H.** (1) Where the proper officer, upon taking stock of the raw materials or manufactured goods in a bonded factory, establishes excesses or deficiencies which the licensee fails to account for to the satisfaction of the proper officer, the licensee shall be guilty of an offence and liable to-

- (a) a fine not exceeding one hundred thousand shillings or twice the ex-factory value (or c.i.f. value in respect of imports) of the deficiency or excess, whichever is the higher, or to imprisonment for a term not exceeding three years or to both; and the goods in respect of which an offence has committed shall be liable to forfeiture; and
- (b) pay the full duties on the excesses or deficiencies.

(2) Any licensee who, without the permission of the Commissioner, disposes of or allows to be disposed of raw materials or manufactured goods from a bonded factory, within the Kenya local market, whether on payment or not, or any person who acquires, keeps, conceals or has in his possession such raw materials or manufactured goods from a

bonded factory, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or three times the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be deemed to be prohibited goods as from the date of such disposal or acquisition.

Importation of equipment, machinery, raw materials, etc.

10 of 1988, s. 5,  
04 of 1993, s. 9.  
13 of 1995, s. 17

**58I.** (1) All item of plant, machinery, spares and imported raw materials for use in the manufacture of goods under bond shall be duly entered and delivered bonded to the factory within such time and subject to such conditions as the Commissioner may prescribe; and if the goods described in this section are not so delivered, then, as from the date of importation, the plant, machinery, spare and raw materials shall be deemed to be prohibited goods, unless a satisfactory explanation is given to the proper officer to account for any delay.

(2) All manufactured goods shall be duly exported or entered for home use within such time and subject to such conditions as the Commissioner may impose.

(3) A manufacturer who contravenes this section shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or twice the ex-factory value (or c. i. f. value in respect of imports); whichever is the higher, or to imprisonment for a term not exceeding three years or to both; and the goods thereof shall be liable to forfeiture and, in addition, the Commissioner may revoke the licence issued under section 58A.

Provisions relating to goods in a bonded factory  
10 of 1998, s. 6.

**58J.** (1) Where goods are warehoused in a bonded factory the Commissioner may, subject to such conditions as he may impose, permit the name of the owner of the goods in the account taken under section 58G to be changed if application therefor is made in the prescribed form and signed by both the owner and the intended owner.

(2) Where goods warehoused in a bonded factory are to be removed to another bonded factory, then the proper officer shall-

- (a) require the owner of the goods deliver an entry thereof in such form and manner as the proper officer may direct;
- (b) require the owner to give security in such amount not being

less than the duty chargeable on the goods, as the proper officer may think fit for the due arrival and re-warehousing of the goods within such time as the proper officer may consider appropriate; and

(c) transmit to the proper officer of the bonded factory where the goods are to be re-warehoused an account containing the particulars of the goods.

(3) Security given under subsection (2) shall not be discharged unless-

(a) the conditions attaining thereto have been satisfied ;

(b) the full duty payable on the goods has been paid in accordance with this Act; or

(c) the goods are otherwise accounted for to the satisfaction of the proper officer, and any duties due in respect of any deficiency in the goods not so accounted for have been paid;

(d) on arrival of the goods at the other bonded factory, a particular account of the goods shall be taken in accordance with section 58G.

Delivery from bonded factory in special circumstances 8 of 1991, s. 5, 9 of 1992, s. 7

**58 K** (1) The Commissioner may, subject to such conditions as he may impose and to the giving of such security as he may think appropriate for the due return thereof, permit goods to be removed from a bonded factory without payment of duty for such purpose, for such period and in such quantities as he may think fit.

(2) A person who contravenes any conditions imposed under subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings or twice the ex-factory selling price (or c. i. f value in respect of imports), whichever is the higher, or to imprisonment for a term not exceeding three years or to both and the goods thereof shall be liable to forfeiture.

Goods from bonded factory may be entered for home use. 4 of 1993, s. 10.

**58L.** The Commissioner may, subject to such conditions as he may impose and on payment of the duties due, permit goods manufactured in a bonded factory, including waste from the manufacturing process, to be for home use.

**PART V--EXPORTATION*****Prohibited and Restricted Exports***

Prohibited and restricted goods.

**59.** (1) The goods specified in Part C of the Eighth Schedule are prohibited goods and the exportation thereof is prohibited.

(2) The goods specified in Part D of the Eighth Schedule are restricted goods and the exportation thereof, save in accordance with any conditions regulating their exportation, is prohibited.

**60.** (1) The Minister may, by order in the Gazette, amend Part C or D of the Eighth Schedule.

(2) The Minister may, by order in the Gazette-

(a) provide that the exportation of any goods or class of goods shall be prohibited or shall be prohibited save in accordance with conditions which may be specified;

(b) limit the application of the provisions of the Eighth Schedule in respect of all or any of the goods specified therein, and thereupon in respect of those goods the provisions of this Act shall apply as if the goods, are, or are not, as the case may be, included in the Eighth Schedule.

(3) Any order made under this section may specify goods, or any class of goods, either generally or in any particular manner, and may prohibit or restrict the exportation thereof either to all places, or to any particular country or place.

**61.** (1) Subject to subsection (2), sections 59 and 60 shall not apply to goods in transit, or for transshipment, or exported as stores of an aircraft or vessel, unless the goods are goods of which the exportation as stores for an aircraft or vessel is expressly prohibited or restricted in an order made under this Act prohibiting or restricting the exportation of goods.

(2) Where under subsection (1), sections 59 and 60 do not apply to goods in transit, or for transshipment, or exported as stores for an aircraft or vessel, then the goods shall be duly exported within such time and subject to such conditions as may be prescribed; and if the goods are not so exported, then, as from the last date on which they should have been so exported, they shall be deemed to be prohibited goods or restricted

goods, as the case may be.

*Entry Outwards and Loading of Aircraft and vessels*

Entry  
outwards of  
aircraft or  
vessel,

**62.** (1) The master or agent of an aircraft or vessel in which goods are to be exported shall make entry outwards of the aircraft or vessel to the proper officer on the prescribed form and in the prescribed manner.

(2) Save with the permission of the proper officer-

(a) no such entry outwards of an aircraft or vessel shall be made before the whole of the cargo reported in the aircraft or vessel for discharge has been discharged;

(b) no goods shall be loaded on the aircraft or vessel before the entry outwards is made.

(3) A master or agent who contravenes subsection (1) and a master who permits goods to be loaded contrary to subsection (2) shall be guilty of an offence.

Entry of cargo  
for export

**63.** (1) Save as otherwise provided in this Act, the whole of the cargo to be loaded for export on an aircraft or vessel shall be entered by the owner of the cargo in the manner prescribed.

(2) Where an owner delivers an entry under this section he shall furnish therewith to the proper officer full particulars, supported by documentary evidence, of the goods referred to in the entry.

(3) A person who contravenes this section shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Loading, etc  
10 of 1998, s. 6  
13 of 1995, s. 19

**64.** (1) Subject to this Act, save with the written permission of the proper officer and subject to such conditions as he may impose-

(a) no goods shall be put on board an aircraft or vessel departing to a foreign port or place unless the goods have first been duly entered;

(b) no goods shall be put on board an aircraft or vessel departing to a foreign port or place at any time whatsoever except as prescribed by the Commissioner:

(c) no goods shall be put on board an aircraft or vessel departing to

a foreign port or place except from an approved place of loading or from a sufferance wharf:

Provided that-

- (i) goods may be put on board an aircraft or vessel from another vessel on to which they had been put on board in order to be loaded on to the aircraft or vessel;
- (ii) with the permission of the proper officer and subject to such conditions as he may impose, goods reported for transshipment may be loaded on to an aircraft or vessel from another aircraft or vessel;
- (d) goods shall be put on board an aircraft or vessel departing to a foreign port or place before entry outwards of the aircraft or vessel;
- (e) no goods shall be put on board an aircraft or vessel to be loaded on to another aircraft or vessel departing to a foreign port or place if the goods may, under the provisions of this subsection, be directly put on board that other aircraft or vessel;
- (f) all goods put on board an aircraft or vessel to be loaded on to another aircraft or vessel departing to a foreign port shall be so loaded within the limits of the port.

(2) A person who contravenes this section, or any of the conditions which may have been imposed by the proper officer, shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Provisions relating to personal baggage, etc 10 of 1988, s. 7 13 of 1995, s.20.

- 65.** (1) Notwithstanding section 64, the proper officer may, subject to any regulations, permit-
- (a) goods which are the bona fide personal baggage of the passengers, or members of the crew, of an aircraft or vessel to be put on board the aircraft or vessel and exported without entry;
  - (b) goods intended for sale or delivery to passengers, or members of the crew, of an aircraft or vessel to be put on board the aircraft or vessel, subject to such conditions as he may impose, without entry;
  - (c) mail bags and postal articles in the course of transmission by post to be put on board and exported without entry;
  - (d) goods to be put on board an aircraft or vessel departing to a foreign port or place without entry subject to an application

being made by the owner on the prescribed form and in the prescribed manner and to an undertaking being given by the owner of the goods to furnish the necessary entry within ninety-six hours, or such further time as the proper officer may specify, of the departure of the aircraft or vessel and to such security, if any, being given by the owner for the due payment of any export duties as the proper officer may consider appropriate.

(2) A person who-

- (a) contravenes any conditions imposed under subsection (1) (b); or
- (b) contravenes any undertaking given under subsection (1) (d), shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; and the goods in respect of the offence has been committed shall be liable to forfeiture.

Goods for export not to be discharged in Kenya.  
10 of 1988, s. 8.

**66.** (1) No goods which have been put on board an aircraft or vessel for export, or for use as stores, or as passengers baggage, shall, save with the written permission of the proper officer and in accordance with such conditions as he may impose, be discharged at any place within Kenya.

(2) A person who contravenes this section, or any conditions imposed by the proper officer, shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and the goods in respect of which the offences has been committed shall be liable to forfeiture.

Good, for export not to be discharged in Kenya.

**67.** (1) Before-

- (a) warehoused goods; or
- (b) goods on which drawback may be claimed; or
- (c) dutiable goods intended for transshipment; or
- (d) restricted goods,

may be entered for exportation, for transshipment, or for use as stores for aircraft or vessels, the proper officer may require the owner of the goods to give security, in such amount and subject to such conditions as he may think fit, that the goods shall be duly put on board the aircraft or vessel for which they are entered and either

duly exported to and discharged at the port or place for which they are so entered, or used as stores, as the case may be, within such time as he may specify.

(2) All goods in respect of which security is required under the provisions of this section (in this section referred to as bonded goods) shall, after being put on board, be duly exported to and discharged at the port or place for which they are entered, or used as stores for aircraft or vessels, as the case may be.

(3) The proper officer may require the owner of bonded goods which have been put on board an aircraft or vessel for exportation to any port or place to produce, within such time as the proper officer may consider reasonable, a certificate from the customs authorities at the port or place of discharge of the due discharge thereof of the goods according to the export entry; and if the owner fails to produce the certificate, or if the certificate does not show that the goods have been duly discharged thereof according to the export entry and the owner fails to account for any of the goods to the satisfaction of the proper officer, then the proper officer may refuse to allow the owner to enter for export and to export any other goods in respect of which security may be required under this section.

(4) Where bonded goods-

- (a) are short-shipped, the owner thereof shall so notify the proper officer within twenty-four hours, or such further time as the proper officer may allow, of the departure of the aircraft or vessel;
- (b) have been removed from a warehouse for delivery on board an aircraft or vessel but are not put on board the aircraft or vessel, the owner thereof shall forthwith enter the goods for warehousing, or for exportation or for use as stores for aircraft or vessels.

(5) Where bonded goods are brought to a customs airport, customs area, or other place, to be put on board an aircraft or vessel and, on examination by the proper officer are found-

- (a) not to agree with the particulars of the entry thereof; or
- (b) being goods under drawback, not to be goods entitled to drawback,

then the owner of the goods shall be guilty of an offence and any

goods in respect of which the offence has been committed shall be liable to forfeiture.

- (6) An owner who-
- (a) contravenes any condition imposed on him under this section in respect of bonded goods; or
  - (b) contravenes subsection (4),
- shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

(7) Where a master contravenes, or causes or permits the contravention of, subsection (2), he shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Store for  
aircraft and  
vessels

- 68.** (1) The proper officer may, on application being made on the prescribed form and in the prescribed manner by the master or agent of an aircraft or vessel departing to a foreign port, permit goods to be put on board the aircraft or vessel for use as stores subject to the payment of any export duty and to such conditions as he may think fit.

(2) A person who puts, or causes or permits to be put, goods on board an aircraft or vessel for use as stores in contravention of this section, or of any conditions imposed by the proper officer, shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Short-  
shipment of  
non-bonded  
goods.  
10 of 1988, s. 9.

- 69.** (1) Where goods (other than bonded goods within the meaning of section 67) are entered for exportation and the goods are not exported in the aircraft or vessel for which they were so entered or are short-shipped, the owner thereof shall so notify the proper officer within forty-eight hours, or such further period as the proper officer may allow, of the departure of the aircraft or vessel.

(2) An owner who contravenes this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings.

Export goods  
stored at risk  
of owner.

- 70.** Where goods are, with the permission of the proper officer, stored in a transit shed or a customs area pending exportation or transshipment or while in transit, then—

(a) they shall be subject to such rent and other charges as may be

Goods liable to export duty.	<p>prescribed; and</p> <p>(b) notwithstanding section 13, they shall be so stored at the risk of the owner.</p> <p><b>71.</b> (1) Where goods are liable on export to duty, the amount of duty shall be stated on the export entry of the goods.</p> <p>(2) No goods liable on export to duty shall be exported until the export duty has been paid or security therefor given to the satisfaction of the proper officer.</p> <p>(3) Where goods liable on export to duty are brought to a customs airport, customs area or other place to be put on board an aircraft or vessel and, on examination by the proper officer, are found not to agree with the particulars of the entry, or application for shipment relating thereto, the owner of the goods shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.</p>
Goods in transit or for transshipment	<p style="text-align: center;"><b><i>Transit or Transshipment Goods</i></b></p> <p><b>72.</b> (1) Subject to sections 16 and 61 and to any regulations, the provisions of this Act relating to the importation, prohibition, restriction, entry, examination, landing, warehousing and exportation of goods shall, so far as they are applicable, apply to goods in transit to a foreign port or place.</p> <p>(2) The provisions of this Act relating to the importation, prohibition, restriction, entry, examination, landing, warehousing and exportation of goods shall, so far as they are applicable, apply to goods transhipped from the aircraft or vessel in which they are to be exported.</p>
Application of Act to postal articles	<p style="text-align: center;"><b>PART VI--IMPORTATION AND EXPORTATION BY POST</b></p> <p><b>73.</b> (1) This Act shall apply to the importation, exportation, and carriage coastwise, of postal articles: Provided that:-</p> <ul style="list-style-type: none"> <li>(i) postal articles may be entered at such place and in such manner as the Commissioner may direct;</li> <li>(ii) any provision of this Act may, in its application to postal articles, be modified or adapted by regulations.</li> </ul>

	<p>(2) An officer, or an officer in the service of the Post Office, who, in the performance of a duty under this Act, examines or seizes a postal article shall be subject in all respects to this Act and the article shall be dealt with in accordance with this Act.</p>
Cap. 411.	<p>(3) This section shall be in addition to, and not in derogation of, the provisions of the Kenya Posts and Telecommunications Corporation Act.</p>
Time or entry of postal articles.	<p><b>74.</b> In the case of goods-</p> <p>(a) imported by post, the time of entry of the goods for home use shall, except in the case where actual entry is required, be deemed to be the time when the duty thereon is assessed by the proper officer;</p> <p>(b) exported by post, the time of entry of the goods for export shall be deemed to be the time of the posting of the goods.</p>

## **PART VII--DEPARTURE AND CLEARANCE OF AIRCRAFT AND VESSELS, AND DEPARTURE OVERLAND**

### *Departure and clearance of Aircraft and Vessels*

Clearance required for departure to foreign port,	<p><b>75.</b> (1) No aircraft or vessel, whether laden or in ballast, shall depart from a port or place in Kenya to a foreign port or place unless a certificate of clearance has been granted in respect of the aircraft or vessel.</p> <p>(2) The master or agent of a vessel or aircraft which departs from a port or place within Kenya in contravention of subsection (1) shall be guilty of an offence.</p>
Grant of clearance.	<p><b>76.</b> (1) The master or agent of an aircraft or vessel, whether laden or in ballast, proposing to depart to a foreign port or place shall apply to the proper officer for a certificate of clearance.</p> <p>(2) Where application for a certificate of clearance is made, then the proper officer shall not grant the certificate of clearance until he is satisfied that all the provisions of this Act in relation to the aircraft or vessel, its cargo, stores, baggage, crew and passengers have been complied with:</p>

Provided that the proper officer may, by reason of the provisions of any other law, refuse to grant the certificate of clearance notwithstanding that he may be satisfied that this Act has been complied with.

(3) Where the master or agent of an aircraft, or of a vessel of less than two hundred and fifty tons register, makes application for a certificate of clearance, then he shall at the same time-

- (a) deliver to the proper officer an outward manifest on the prescribed form and in the prescribed manner;
- (b) produce to the proper officer all documents which he may require relating to the aircraft or vessel and its cargo, stores, baggage, crew and passengers;
- (c) answer all questions which the proper officer may ask relating to the aircraft or vessel and its cargo, stores, baggage, crew and passengers.

(4) Where the master or agent of a vessel of two hundred and fifty tons register or more makes application for a certificate of clearance then the proper officer may grant clearance subject to an undertaking by the master or agent to deliver to the proper officer, within twenty-four hours of the grant of the certificate of clearance, the outward manifest of the vessel in the prescribed form and in the prescribed manner, and to answer all questions which he may be asked relating to the vessel, its cargo, stores, baggage, crew and passengers.

(5) Where an aircraft or vessel proposes to depart to a foreign port in ballast, then the aircraft or vessel shall be cleared in ballast, that is to say, the words "in ballast" shall be written in those parts of the form relating to the aircraft or vessel which contain provisions for the particulars of its cargo; and for the purpose of this subsection, an aircraft or vessel shall be deemed to be in ballast when the aircraft or vessel carries, in addition to the crew and its stores, only passengers and their bona fide personal baggage.

(6) The proper officer may permit the master or agent of an aircraft or vessel to amend an obvious error in the outward manifest, or to supply an omission that, in the opinion of the proper officer, results from accident or inadvertence, by furnishing an amended or supplementary outward manifest in the prescribed manner.

	<p>(7) Where a certificate of clearance has been granted but the aircraft or vessel in respect of which it was granted has not left the limits of the port in which it was granted, then the proper officer may inform, either orally or in writing, the master of the aircraft or vessel that the certificate of clearance has been cancelled and may require the return of the certificate, and thereupon the certificate shall be deemed never to have been granted.</p> <p>(8) A master or agent who contravenes an under-taking given under subsection (4), or who refuses to return a certificate of clearance when so required to do under subsection (7), shall be guilty of an offence.</p>
Clearance to be produced.	<p><b>77.</b> (1) The proper officer may board an aircraft or vessel in Kenya after clearance and require the master thereof to produce his certificate of clearance and to answer questions relating to the aircraft or vessel, its cargo, stores, baggage, crew and passengers.</p> <p>(2) The master of an aircraft or vessel who fails to produce the certificate of clearance on demand shall be guilty of an offence.</p>
Deficiency or surplus in cargo or stores.	<p><b>78.</b> (1) Where, on an aircraft or vessel being bearded surplus in by the proper officer, goods or stores which are not contained in the manifest of the aircraft or vessel are found on the aircraft or vessel, then the master thereof shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.</p> <p>(2) Where, on an aircraft or vessel being bearded by the proper officer, goods which were reported on the arrival of the aircraft or vessel as remaining on board for other ports in Kenya, or for re-exportation, or as stores, or which after arrival were put on board for removal under bond to another port in Kenya, or for exportation or use as stores, are not on board, due allowance being made in the case of stores for goods which might fairly have been consumed or used, then the master of the aircraft or vessel shall be guilty of an offence.</p> <p>(3) Where, on an aircraft or vessel being bearded by the proper officer after its return to Kenya from a voyage to a foreign port or place, goods which on the previous arrival of the aircraft or vessel were reported as stores or were then put on board as stores are not on board, due allowance being made for goods which might fairly have been</p>

consumed or used, the master of the aircraft or vessel shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings and in addition, the master shall be liable to pay the duty on the deficiency of the goods at the rate chargeable on the importation of similar goods.

Aircraft or vessels to bring to at boarding station.

**79.** (1) The master of an aircraft or vessel departing to a foreign port shall bring to at the boarding station for the purpose of disembarking any officer on the aircraft or vessel, or for any other purpose of this Act, or when required so to do by the proper officer.

(2) A master of an aircraft or vessel who contravenes this section shall be guilty of an offence.

#### *Departure Overland*

Departure overland

**80.** (1) A person, whether or not in charge of a vehicle and whether or not the vehicle may be conveying goods which are dutiable, departing overland from Kenya shall not, except where otherwise permitted by the proper officer, depart from Kenya at a place other than from a port or place appointed under section 9 and shall before departing-

- (a) report his intended departure to the officer stationed at the port nearest to the point at which he proposes to cross the frontier;
- (b) furnish on the prescribed form such information as may be require concerning any vehicle and goods;
- (c) make and subscribe a declaration as to the truth of all particulars contained in the form;
- (d) fully and immediately answer all relevant questions put to him by the proper officer;
- (e) produce all consignment notes or other relevant documents demanded of him by the proper officer;
- (f) save as otherwise provided in this Act, make due entry of any vehicle and goods.

(2) The proper officer may stop and question any person, whether or not he has goods in his possession, appearing to be about to depart overland from Kenya, and the person shall thereupon fully and immediately answer all relevant questions concerning his movements and any goods in his possession as may be put to him.

(3) No vehicle or goods to which this section applies shall, except under

and in accordance with the terms of permission granted by the proper officer, be removed across the frontier until after due entry thereof has been made.

(4) The Commissioner may, subject to such conditions as may be specified, exempt any person or class of persons from the provisions of this section.

(5) A person who contravenes any of the provisions of this section shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture.

### **PART VIII--CARRIAGE OF GOODS COASTWISE**

Meaning of carriage coastwise 13 of 1979,s.2

Carriage coastwise in aircraft or vessel from foreign port. 13 of 1979,s.2

**81.** Subject to section 82, all goods conveyed by air, sea or inland waterways from a part of Kenya to another part thereof shall be deemed to be carried coastwise, and an aircraft or vessel conveying the goods shall be deemed to be a coasting aircraft or coasting vessel, as the case may be.

**82.** (1) When an aircraft or vessel carrying cargo arrives at a port or place in Kenya from a foreign port or place, then the proper officer may permit the aircraft or vessel to carry goods coastwise from that port or place to another port or place within Kenya upon the presentation by the master of a declaration as set out in section 84.

(2) Where an aircraft or vessel to which subsection (1) applies conveys goods from one port of Kenya to another port thereof, the aircraft or vessel shall not by virtue thereof be deemed to be a coasting aircraft or coasting vessel within the meaning of this Act.

(3) When goods are carried coastwise under the provisions of this section, then the loading, unloading and delivery thereof shall be subject to any regulations and to such conditions as the Commissioner may impose.

Loading, etc., of coastwise cargo.

**83.** (1) Subject to this Act, save with the written permission of the proper officer and subject to such conditions as he may impose-

(a) no goods shall be loaded on to, or unloaded from, an aircraft or vessel for carriage coastwise at any time whatsoever except as prescribed by the Commissioner;

(b) no goods for carriage coastwise shall be loaded on to, or

unloaded from, an aircraft or vessel, except at an approved place of loading or at a sufferance wharf:

Provided that goods may be loaded on to, or unloaded from, an aircraft or vessel, from or on to another vessel or vehicle used for the purpose of the carriage of goods between that aircraft or vessel and an approved place of landing or sufferance wharf;

(c) all goods which have been unloaded or landed from a coasting aircraft or vessel shall, if the proper officer so requires, be conveyed forthwith to a customs area or transit shed.

(2) A person who contravenes this section, or any of the conditions which may have been imposed by the proper officer, shall be guilty of an offence and shall be liable to a fine not exceeding forty thousand shillings and any goods in respect of which the offence has been committed, shall be liable to forfeiture and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

Transire  
required for  
departure  
coastwise

**84.** (1) No coasting aircraft or coasting vessel, nor an aircraft or vessel which is carrying goods coastwise in accordance with section 82, shall depart from a port or place within Kenya unless a transire has been granted by the proper officer.

(2) The master or agent of an aircraft or vessel to which subsection (1) applies proposing to depart coastwise, shall deliver to the proper officer an account in triplicate on the prescribed form containing the particulars of all cargo taken on board for carriage coastwise; and the original thereof, dated and signed by the proper officer, shall constitute the grant of a transire for the carriage of the goods specified therein and shall, in the case of a coasting aircraft or coasting vessel be the certificate of clearance for the aircraft or vessel for the coastwise voyage.

(3) A master or agent who contravenes this section, or who delivers an account of which any of the particulars contained therein is false, shall be guilty of an offence and liable to a fine not exceeding Forty thousand shillings and the transire required for departure coastwise coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

Transire to be  
delivered on

**85.** (1) The master or agent of an aircraft or vessel, arriving at a port or

arrival	<p>place within Kenya carrying goods coastwise-</p> <p>(a) shall forthwith deliver the transire to the proper officer of that port or place;</p> <p>(b) shall not, save with the permission of the proper officer and subject to such conditions as he may impose, permit goods to be unloaded before the delivery of the transire:</p> <p>Provided that in the case of a vessel of two hundred and fifty tons register or more, the transire may be delivered within twenty-four hours of arrival and the goods may be unloaded therefrom before the delivery of the transire.</p> <p>(2) A master or agent who contravenes this section shall be guilty of an offence and liable to a fine not exceeding forty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture, and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
Power of Commissioner to vary procedure	<p><b>86.</b> (1) Notwithstanding this Act, the Commissioner may permit a coasting aircraft or coasting vessel to be loaded, unloaded and cleared subject to such conditions as he may in any particular case impose.</p> <p>(2) The master or agent of a coasting aircraft or coasting vessel who contravenes any conditions imposed by the Commissioner under this section shall be guilty of an offence and liable to a fine not exceeding forty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture, and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
Entry outwards of aircraft, etc., carrying goods coastwise.	<p><b>87.</b> The Commissioner may, subject to such conditions as he may impose, permit the master or agent of an aircraft or vessel carrying goods coastwise to enter outwards the aircraft or vessel and to enter goods carried coastwise therein for exportation without discharging the goods.</p>
Coasting vessel, etc., not to deviate from voyage.	<p><b>88.</b> The master or agent of a coasting aircraft or coasting vessel-</p> <p>(a) which deviates from its voyage, unless forced to do so by circumstances beyond the control of the master, the proof whereof shall lie on the master; or</p> <p>(b) which, having deviated from its voyage or having taken on board</p>

Examination  
of coasting  
aircraft,  
coasting vessel  
and goods.

a wreck or other goods or discharged goods in the course of a voyage, does not forthwith proceed directly to the nearest port or place in Kenya and explain the circumstances thereof to the satisfaction of the proper officer and deliver the wreck or other goods taken on board to proper officer,  
shall be guilty of an offence and any goods in respect of which the offence has been committed shall be liable to forfeiture, and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

**89.** (1) An officer may go on board a coasting aircraft or coasting vessel in any port or place or at any period of its voyage and search it and examine all goods on board.

(2) Where an officer goes on board a coasting aircraft or coasting vessel, he may require the master or agent thereof to answer questions concerning the aircraft or vessel, its cargo, stores, baggage, crew and passengers and to produce any books and documents which are, or should be, on board.

(3) An officer may examine goods which have been unloaded from an aircraft or vessel after carriage coastwise or which are brought to a port or place to be loaded on to an aircraft or vessel for carriage coastwise; and for the purposes of the examination the officer may require the owner of the goods to unpack or open them and to repack them at the expense of the owner.

(4) A master or agent who, under this section-

(a) refuses to answer a question or to produce books or documents;  
or

(c) makes an incorrect reply to a question,

shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

#### **PART IX- MANUFACTURE OF EXCISABLE GOODS**

License  
required to  
manufacture  
excisable

**90.** (1) No person shall manufacture excisable goods unless he is licensed by the Commissioner to manufacture them.

goods, 10  
of 1980, s. 2

Application  
for and grant  
of licence  
10 of 1980, s. 6.

(2) A person who contravenes this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any plant or excisable goods, or any materials, in respect of which the offence has been, committed shall be liable to forfeiture.

**91.** (1) Subject to this Act, the Commissioner may on application grant a licence to a person to manufacture excisable goods; and the Commissioner may, without assigning any reason, refuse to grant the application.

(2) A separate application shall be required in respect of-

- (a) each factory in which excisable goods are to be manufactured;
- (b) each class of excisable goods to be manufactured.

(3) An application for a licence shall be made to the Commissioner on the prescribed form.

(4) Where the commissioner has granted an application for a licence under this section he shall-

- (a) on the payment of the prescribed fee by the applicant, issue the licence in the prescribed form; and
- (b) Subject to section 93, on the application and payment of the prescribed fee, issue a renewal of licence.

(5) Subject to subsection (6), a licence shall be issued to a particular person and shall be in respect of the factory and class of excisable goods specified in the licence; and

- (a) a factory in respect of which a licence has been issued under this Act shall not be used-
  - (i) except for the manufacture of the excisable goods specified in the licence;
  - (ii) for the manufacture of more than one class of excisable goods;
- (b) no person other than the licensee shall manufacture goods, whether excisable or not, in that factory.

(6) Notwithstanding the provisions of subsection (5), the goods specified in each of the following paragraphs shall be regarded as one

class of excisable goods for the purposes of that subsection-

- (i) cigarettes, cigars and manufactured tobacco;
- (ii) perfumery, cosmetic or toilet preparations.

(7) A person who contravenes subsection (5) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any plant or excisable goods or any materials in respect of which the offence has been committed shall be liable to forfeiture.

Transfer of  
licence

**92.** (1) A licensee may apply to the Commissioner--

- (a) to transfer his licence to another person; and in that case the other person shall join in the application;
- (b) to transfer his factory to another place;
- (c) to manufacture another class of excisable goods in his factory on his ceasing to manufacture in that factory the class of excisable goods specified in the licence; and the Commissioner may grant or, without assigning reason, refuse to grant any such application.

(2) An application under this section shall be made to the Commissioner on the prescribed form.

(3) Where he has granted an application under this section, the Commissioner shall, on surrender of the existing licence and on payment of the prescribed fee, if any, make the necessary endorsement thereon or issue a fresh licence, as he may think most convenient.

Power to  
revoke, etc.,  
licence.

**93.** (1) The Commissioner may revoke, suspend or refuse to renew, a licence where he is satisfied that-

- (a) the licensee has been guilty of an offence under this Act;
- (b) the licensee has been convicted of an offence involving dishonesty or fraud;
- (c) the licensee has become a bankrupt or has entered into an arrangement or composition with or for the benefit of his creditors;
- (d) the factory, or the plant therein, is of such a nature or so maintained that the excisable goods manufactured therein are likely to be adversely affected;
- (e) the factory is so designed, equipped or sited as to render difficult the supervision thereof for excise purposes;

(f) the licensee has failed to comply with the provisions of section 95.

(2) Where the Commissioner revokes, suspends or refuses to renew a licence under this section, then he shall forthwith give notice of that fact to the licensee.

Effect of  
revocation,  
etc., of licence.  
10 of 1980, s. 2,  
13 of 1995, s. 30

**94.** (1) Where a licence has been revoked or suspended or has expired, then the licensee shall-

- (a) forthwith cease to manufacture the excisable goods referred to in the licence;
- (b) forthwith pay duty on the excisable goods manufactured under the licence;
- (c) not dispose of materials in the factory to which the licence relates except in accordance with such conditions as the Commissioner may impose.

(2) A person who contravenes this section or any of the conditions imposed by the Commissioner under this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings; or to both; and any plant or excisable goods, or any materials, in respect of which the offence has been committed shall be liable to forfeiture.

Provision of  
facilities for  
excise control

**95.** (1) The Commissioner may, for the purpose of ensuring proper excise control, require a licensee to provide and maintain, to the satisfaction of the Commissioner and at a rental to be approved by him, suitable housing accommodation for the officer assigned to the duty of excise control of a factory.

(2) The Commissioner may, for the purpose of ensuring proper excise control, require a licensee to provide and maintain, to the satisfaction of the Commissioner, suitable office accommodation and equipment in a factory for the officer assigned to the duty of excise control of the factory.

(3) A licensee shall provide and maintain at his factory just scales and weights, lights, ladders and other equipment as may be necessary in order to enable the proper officer to take account of, or check by weight, gauge or measure, all excisable goods or materials in the factory

Licensee to  
keep books.

etc.

**96.** (1) A licensee shall keep at his factory and in the prescribed manner all records which may be required under the provisions of this Act and shall make therein the prescribed entries relating to the manufacture, storage and delivery of excisable goods and materials; and every such entry shall be made legibly in ink and, subject to section 112, shall not be altered in any manner other than by cancellation, that is to say, by drawing a single line in ink through the in-correct entry so as to allow the original entry to remain legible, or by amendment, that is to say, by so drawing a single line through the incorrect entry and making a correcting entry above the entry so cancelled.

(2) A licensee shall render, in the prescribed manner and at the prescribed times, such returns as may be required of him in accordance with the provisions of this Act.

(3) Records required to be kept under the provisions of this Act shall at all times be available for inspection by the proper officer and the officer may take copies of any entry therein.

(4) A licensee who contravenes this section shall be guilty of an offence.

## **PART X CONTROL OF MANUFACTURE OF EXCISABLE GOODS**

### *Entry of Premises and Plant*

Manufacturers  
entry  
10 of 1980, s. 2.

**97.** (1) A licensee shall, before commencing manufacture, make entry on the prescribed form and in the prescribed manner of each building, room, place and item of plant in his factory which he proposes to use in the manufacture, preparation for sale, or storage, of materials or excisable goods; and in each entry he shall specify the purpose for which each building, room, place or item of plant is to be used and, unless the Commissioner otherwise allows, the mark by which it is to be distinguished.

(2) Where a licensee is a body corporate then the entry shall be made under the seal thereof and the signature of any principal officer thereof authorized by the constitution of the body corporate to authenticate the seal, or by an agent duly authorized under the seal and signature.

(3) The Commissioner may at any time by notice in writing to the

licensee require new entry to be made by the licensee within one month of the date of the notice; and as from the expiration of that period the existing entry shall be deemed to be void and of no effect.

(4) A licensee shall not, in the course of the manufacture, preparation for sale, or storage, of materials or excisable goods-

- (a) make use of a building, room, place or item of plant in relation to which entry is required under this section unless there is in force in respect thereof a valid entry;
- (b) make use of a building, room, place or item of plant for any purpose other than that for which it was entered;
- (c) effect, without the prior permission of the proper officer, an alteration in shape, position or capacity to a building, room, place or item of plant.

(5) A licensee who contravenes subsection (1) or (4) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any plant or excisable goods, or any materials, in respect of which the offence has been committed shall be liable to forfeiture.

Rooms and plant to be marked.

**98.** (1) Unless the Commissioner otherwise allows, a licensee shall cause to be painted and maintained legibly and in oil colours on the outside of the door of every room and on every item of plant, required to be entered in accordance with the provisions of this Act the name of the room or item of plant according to the purpose for which it was so entered; and where more than one room or item of plant is to be used for the same purpose, then each such room or item of plant, as the case may be, shall in addition be marked with progressive numbers.

(2) A licensee who contravenes any of the provisions of this section shall be guilty of an offence.

#### *Provisions Relating to the Manufacture of Spirits*

Power of Commissioner to direct that Act and regulations shall not apply.

**99.** (1) Where the Commissioner-

- (a) is satisfied that a process of manufacture carried on by a person involving the manufacture of spirits is primarily directed to the production of an article other than spirits; or
- (b) sees fit in the case of a person manufacturing spirits by a process other than distillation of a fermented liquor,

(c) he may direct that, subject to compliance with such conditions as he may impose, such provisions of this Act or of any regulations made thereunder as may be specified in the direction shall not apply in the case of that person.

(2) If a person in whose case a direction has been given by the Commissioner under this section acts in contravention of, or fails to comply with, any conditions imposed by the direction, he shall be guilty of an offence and any plant, spirits or materials in respect of which the offence has been committed shall be liable to forfeiture.

Distiller's and  
rectifier's  
warehouse.

**100.** (1) A distiller may provide in association with his distillery a place of security known as a distiller's warehouse for the deposit of spirits manufactured at that distillery and if the place is approved by the Commissioner and it is included in the distiller's entry of premises, he may deposit therein without payment of duty spirits so manufactured.

(2) A rectifier may provide within his factory premises a place of security known as a rectifier's warehouse for the deposit of spirits removed from a distillery or distiller's warehouse for the purpose of rectification and compounding by him at that factory and, if the place is approved by the Commissioner and it is included in the rectifier's entry of premises, he may deposit therein without payment of duty spirits so removed from a distillery or distiller's warehouse.

(3) If in the case of a distiller's warehouse the place of security provided is outside the distiller's distillery the Commissioner may attach to his approval such conditions as he may see fit, and if those conditions are not for the time being observed, that place shall be deemed not to have been approved by the Commissioner.

(4) A distiller's warehouse, wherever situated, or a rectifier's warehouse shall, for the purpose of section 95, be deemed to be part of the distiller's distillery or the rectifier's factory, as the case may be.

Restriction on  
delivery of  
immature  
spirits

**101.** (1) Subject to subsection (2) no spirits shall be delivered from a distillery or a distiller's warehouse unless they have been warehoused for a period of at least three years.

(2) Subsection (1) shall not apply to-

- (a) spirits delivered for rectification;
- (b) spirits delivered for denaturing;
- (c) spirits delivered for exportation;
- (d) spirits distilled at a strength of not less than sixty degrees over proof delivered for compounding;
- (e) spirits delivered to a wine manufacturer.

(3) If a person delivers or procures or attempts to procure the delivery of spirits in contravention of this section he shall be guilty of an offence; and any spirits the delivery of which has been procured by the offence shall be liable to forfeiture.

Restriction on carrying on of other trades by distillers, rectifier or denaturer.

**102.** (1) Save with the written permission of the Commissioner and subject to such conditions as he may impose, a distiller or rectifier or denaturer shall not carry on within his factory any trade other than that of a distiller, rectifier or denaturer, nor shall he carry on another trade on premises communicating otherwise than by a public roadway with his factory.

(2) A person contravening this section or any conditions imposed by the Commissioner under subsection (1) shall be guilty of an offence.

Keeping or use of still otherwise than by distiller or rectifier prohibited.  
10 of 1980, s. 2.

**103.** (1) Subject to this section, no person other than a distiller or rectifier shall keep or use a still.

(2) The Commissioner may permit, subject to such conditions as he may impose, the keeping and use of a still by a person other than a distiller or rectifier where the still is-

- (i) is kept by a person who makes or keeps stills solely for the purpose of sale; or
- (ii) kept or used for experimental, analytical or scientific purposes; or
- (iii) kept or used for the manufacture of an article other than spirits.

(3) A person who, not being a distiller or rectifier or permitted to do so by the Commissioner, keeps or uses a still shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and the still shall be liable to forfeiture.

Deposit of rectified or compounded spirits in bonded warehouses.

**104.** (1) Spirits which have been rectified or compounded by a rectifier may be deposited in a bonded warehouse in such quantities and under such conditions as the Commissioner may determine for exportation or shipment for use as stores for an aircraft or vessel.

(2) No rectified or compounded spirits may be delivered from a bonded warehouse for home use save with the written permission of the Commissioner and subject to such conditions as he may impose.

Penalty for excess or deficiency in stocks of spirits.

**105.** (1) If, when an account is taken by a proper officer and a balance struck of the spirits in the stock of a distiller including stocks in the distiller's warehouse, or in the stock of a person engaged in rectifying or denaturing spirits, or in the stock of a person obtaining spirits in respect of which excise duty has been remitted for a particular purpose, any spirits in excess of what should be in stock are found, the distiller or person shall, unless the excess is accounted for to the satisfaction of the Commissioner, be guilty of an offence and liable to a fine equal to double the excise duty on a quantity of spirits equal to the excess and the excess of spirits shall be liable to forfeiture.

(2) If, when an account is taken and a balance struck as aforesaid, a deficiency in the spirits which should be in stock is found which cannot be accounted for to the satisfaction of the Commissioner after due allowance has been made for losses in manufacture or in transit, the distiller or person shall be guilty of an offence and liable to a fine equal to double the excise duty on a quantity of spirits equal to the deficiency, and duty on such a quantity shall thereupon become due and shall, notwithstanding section 134, be forthwith paid.

Denaturing of spirits  
10 of 1980, s. 2

**106.** (1) No spirits shall be denatured for sale as denatured spirits except in accordance with a formula prescribed by regulations for either methylated spirits or specially denatured spirits.

(2) A person who contravenes this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any plant, spirit or materials in respect of which such offence has been committed shall be liable to forfeiture.

**107.** Part IX and sections 97 and 98 shall apply to the denaturing of spirits as they do to the manufacture of excisable goods:

Provided that nothing in section 91 (5) shall preclude a distiller, licensed to denature spirits, from denaturing in his distillery spirits manufactured by him therein.

***Provisions Relating to Manufacture of Excisable Goods other than Spirits***

Storage of excisable goods after manufacture.

**108.** (1) All excisable goods (other than spirits) shall, after the process of manufacture has been completed, be forth- with removed to a room, of which entry for that purpose has been made in accordance with this Act, and which shall be known as the stock room; and the goods shall be kept therein until delivery therefrom is made in accordance with the provisions of this Act.

(2) A stock room shall not be used for any purpose other than of storing excisable goods after they have been manufactured.

(3) The excisable goods in a stock room shall be stored so as to facilitate the taking of a full account of them.

(4) A licensee who contravenes this section shall be guilty of an offence and any excisable goods in respect of which the offence has been committed shall be liable to forfeiture.

Provisions relating to stock book and returns.  
8 of 1996, s.3.

**109.** (1) A licensee (other than a distiller) shall keep a stock book in the prescribed form and shall each day enter therein the particulars of all excisable goods received in and delivered from the stock room; and the stock book shall at all times be available for Inspection by the proper officer, and the officer may take copies of any entry therein.

(2) All deliveries made from the stock room shall be entered in the stock book at the time of delivery from the stock room.

(3) The licensee shall transmit to the Commissioner, on or before the twentieth of each month, a transcript in duplicate of the stock book showing all transactions entered therein during the previous month.

(4) A licensee who contravenes this section shall be guilty of an offence and any excisable goods in respect of which the offence has been committed shall be liable to forfeiture.

Deficiency or excess in stock

**110.** (1) Where, upon the proper officer taking stock in the factory of a

of licensee.

licensee (other than a distiller, denature or rectifier)-

- (a) the licensee fails to account to the proper officer for any excisable goods manufactured by him, then the duty on all such excisable goods shall thereupon become due and shall, notwithstanding section 137 be forthwith paid;
- (b) excisable goods are found in excess of the quantity which, according to the books of the licensee, should be therein, then those goods shall be liable to forfeiture.

(2) A licensee (other than a distiller, denaturer or rectifier –

- (a) who fails to account to the proper officer for any excisable good manufactured by him; or
- (b) in whose factory any excisable goods are found in excess of the quantity which, according to the books, should be therein, shall, unless he explains the deficiency or excess to the satisfaction of the proper officer, be guilty of an offence.

Provisions relating to manufacture of tobacco.

**111.** (1) A tobacco licensee shall, if the Commissioner by notice in writing so requires, keep a materials account in the prescribed form and shall enter therein particulars of all unmanufactured tobacco received at the factory for manufacture; and the account shall be balanced at the end of each month.

(2) A tobacco licensee shall not, save with the permission of the Commissioner and subject to such conditions as he may impose, sell or otherwise dispose of tobacco which is not liable to duty.

(3) A tobacco licensee who contravenes this section or any condition imposed by the Commissioner in accordance with this section shall be guilty of an offence and any excisable goods or materials in respect of which the offence has been committed shall be liable to forfeiture.

Deposit of cigarettes or manufactured tobacco in bonded warehouses.  
8 of 1985, s. 2.

**111A.** (1) Cigarette or manufactured tobacco may be deposited in a bonded warehouse, in such quantities and under such conditions as the Commissioner may determine, for exportation or shipment for use as stores for an aircraft or vessel.

(2) No cigarettes or manufactured tobacco may be delivered from a bonded warehouse for home use except with the written permission of the Commissioner and subject to such conditions as he may impose.

Provisions  
relating to  
brewing book.  
10 of 1980, s. 2.

**112.** (1) The proper officer shall deliver a book in the prescribed form, to be known as the brewing book, to every brewer and the brewer shall keep the book in his factory and available at all times for inspection by the proper officer; and the officer may take copies of any entry therein.

(2) A brewer shall-

- (a) at least two hours before he commences to mash malt or corn, or dissolve other materials, enter in the brewing book the day and hour of the next brewing;
- (b) at least two hours before the time so entered for the next brewing, enter in the brewing book the separate quantities of the malt, corn, and other materials which he proposes to use in the next brewing;
- (c) at least two hours before the time so entered for the next brewing, enter in the brewing book the time when all the worts are to be drawn off the grains in the mash tun;
- (d) within one bout of the worts being collected or, if they are not collected before nine o'clock in the afternoon, before nine o'clock in the morning of the following day, enter in the brewing book the particulars of the quantity and gravity of the worts and the description and number of each vat into which the worts have been collected; and where fermentation has commenced in any worts before entry of the quantity and gravity thereof has been made, then the true original gravity thereof before fermentation shall be entered.

(3) A brewer shall, when making any entry in accordance with the provisions of subsection (2), also enter the date and hour on which the entry is made; and no entry in the brewing book shall be cancelled, obliterated, or in any way altered.

(4) A brewer who contravenes any of the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and any excisable goods, or any materials, in respect of which the offence has been committed shall be liable to forfeiture.

(5) For the purpose of subsection (2) "other materials" include--

	<ul style="list-style-type: none"> <li>(a) sugar;</li> <li>(b) any saccharine substance, extract, or syrup;</li> <li>(c) rice;</li> <li>(d) flaked maize and any other description of corn which in the opinion of the Commissioner is prepared in a manner similar to flaked maize;</li> <li>(e) any other material capable of being used in brewing except malt, corn, hops, hop concentrate or hop oil.</li> </ul>
Notice or brewing may be required	<b>113.</b> A brewer shall, if so required by the proper officer, give notice in writing containing the prescribed particulars to the proper officer at least forty-eight hours before the time when he proposes to make his next brewing.
Provisions relating to brewing.	<p><b>114.</b> (1) All worts shall be removed successively and in the customary order of brewing from the mash tun to the underback, coppers, coolers and collecting and fermenting vats or, if these are separate vats, from the collecting vats within the premises where the brewing commenced.</p> <p>(2) A brewer who contravenes this section shall be guilty of an offence and any excisable goods and materials in respect of which the offence has been committed shall be liable to forfeiture.</p>
Provision relating to false declaration of original gravity of beer.	<p><b>115.</b> (1) Before bottling, packing or removing beer to another brewery or licensed premises, the brewer shall declare in such form as the proper officer may require, the original gravity of the beer.</p> <p>(2) A brewer who makes a false declaration under this section shall be guilty of an offence.</p>
Liabilities of beer to excise duty	<p><b>116.</b> No beer may be consumed on, or removed from, a brewery or licensed premises unless duty has first been paid thereon:</p> <p>Provided that the Commissioner may either specifically or generally permit-</p> <ul style="list-style-type: none"> <li>(i) the removal of beer, in bulk, to another brewery or licensed premises for the purpose of bottling or packing;</li> <li>(ii) the drawing of production samples of beer by the brewer for analysis without payment of duty thereon under such conditions as the Commissioner may require,</li> </ul>
Fortification and mixing of wine.	<b>116A.</b> Subject to such conditions and limitations as may be prescribed, a wine manufacturer may-

8 of 1991, s. 7

(a) mix in his factory, spirits with wine manufactured by him in a proportion not exceeding ten litres of proof spirits to one hundred litres of wine:

Provided that the mixture shall not thereby be raised to a greater strength than fifty degrees of proof; or

(b) during the process of manufacturing in his factory, mix wine made by him with imported wine on which the full duties of customs have been paid.

## PART XI--DUTIES

### *General Provision*

Imposition,  
rates etc., of  
duty.  
10 of 1988, s.10,  
8 of 1988, s. 3,  
8 of 1991, s. 8,  
9 of 1992, s. 8.

**\*117.** (1) Subject to the provisions of this Act, there shall be charged--

(a) in respect of the goods specified in the fourth column of the First Schedule which are imported into Kenya import duties at the respective rates specified in the fifth column of that Schedule.

(b) in respect of goods specified in the second column of the Second Schedule which are imported into Kenya, suspended duties at the respective rates specified in the fourth column of that Schedule;

(c) in respect of the goods specified in the Fourth Schedule, export duties at the rates and in the circumstances specified therein;

(d) in respect of excisable goods specified in the second column of the Fifth Schedule, excise duties at the respective rates specific in the fourth column of that Schedule:

Provided that where excisable goods on which duty has been paid are converted into other excisable goods liable to a higher rate of duty, whether specified or *ad valorem*, then the converted excisable goods shall only be liable to duty at a rate equal to the difference between the higher rate of duty and the duty originally paid thereon;

(e) dumping duties in accordance with any order made under section 125;

(f) in respect of the goods specified in the Eleventh Schedule which are imported into Kenya, variable import duty in accordance with that Schedule;

and those duties shall be levied, collected, and paid in accordance with this Act.

- (2) Notwithstanding subsection (1), no duty shall be charged on-
- (a) the goods listed in Part A of the Third Schedule, when imported, purchased before clearance through the customs, for use by the persons named in that part in accordance with any condition attached thereto as set out in that Part; and
  - (b) the goods listed in Part B of the third Schedule when imported purchased before clearance through the customs,. In accordance with any condition attached thereto as set out in that Part.

(3) Notwithstanding subsection (2) the goods listed in Part C of the Third Schedule shall, when imported or purchased before clearance through the customs for use by the persons named, or in accordance with any condition attached thereto as set out, in that Part, be charged duty at the rates specified therein.

Arrangements  
for bilateral  
relief from  
duty  
13 of 1984, s. 3,  
8 of 1991, s. 9.

**118.** The Minister may from time to time by notice in the Gazette declare that arrangements specified in the notice being arrangements that have been made between the Government of Kenya and another government with a view to the mutual relief of duty, shall, notwithstanding section 117, have effect in relation to duty. **Bold** the notice shall, subject to the provisions of this section, have effect according to its tenor.

Retaliatory  
imposition of  
duties, etc  
4 of 1999,s.9.

**118A.** The Minister may, by notice in the Gazette, impose on any goods imported into Kenya, such conditions or rates of duty as he may deem necessary to protect Kenya's interest where the country of importation practices unfair or restrictive trade practices on Kenyan goods exported to that country.

Variation of  
rates of duty.  
9 of 1992, s. 9.  
13 of 1995, s.36.  
L/N

**\*119.** (1) The Minister may subject to sub-section 1A, by order in the Gazette, amend the First, Fourth or Fifth Schedule by increasing or decreasing any of the rates of import duty, export duty or excise duty by an amount not exceeding thirty per centum of the rate set out therein:

Provided that-

- (i) in the case of maize, wheat, sugar, milk, rice or used clothing, the rates of duty may be increased by an amount not exceeding seventy five per centum of the prescribed rates;
- (ii) nothing in this subsection shall empower the Minister to impose duty on any article which is free of duty.

(1A) Notwithstanding the provisions of sub section (1), the Minister may, by order in the Gazette, decrease the rates of duty on maize, wheat, beans, milk or rice by any amount during periods of civil strife, national disaster or calamity declared under any written law for the time being in force and shall, upon revocation of the declaration, increase the rates of duty by such amount as may be necessary to restore the rates prevailing immediately before the declaration.

(2) The Minister may, by order in the Gazette, amend the Second Schedule by increasing or decreasing any rate of suspended duty imposed in the fourth column thereof up to that provided in the third column thereof.

(3) The Minister may, by order in the Gazette, amend the Eleventh Schedule.

(4) A variation in the rate of any duty made under subsection (1) or (2) shall be laid before the National Assembly without unreasonable delay and shall cease to have effect if a resolution of the National Assembly disapproving the variation is passed within twenty days from the first day on which the National Assembly next sits after the variation is so laid.

(5) Where an order made under subsection (1) or (2) ceases to have effect by virtue of a resolution under subsection (3), then so much of any duty paid under the order as may be in excess of that duty, if any, payable on the article immediately after cessation shall, on application, be refunded to the person who paid it.

(6) An application for a refund payable under subsection (4) shall be made in the prescribed manner and within twelve months of its becoming due.

Effect of alteration of duty on contract for sale.

**120.** If, after a contract has been entered into for the sale or delivery of goods at a price which includes duty charged under section 117, an alteration takes place in the rate or amount of the duty before the goods are entered for home use or before export duty or excise duty becomes due, then, in the absence of express written provision in the contract to the contrary, the contract shall have effect as follows-

(a) in the event of the alteration being the increase of an existing duty or the imposition of a new duty, the seller, after payment of all the duty

	<p>payable, may add the difference caused by the alteration to the agreed price;</p> <p>(b) in the event of the alteration being the reduction or abolition of an existing duty, the purchaser may deduct the difference caused by the alteration from the agreed price;</p> <p>(c) in the event of the alteration not being finally adopted, the agreed price shall be readjusted so as to allow for any resultant refund or payment of duty.</p>
Effect of obligation to pay duty.	<p><b>121.</b> Where an obligation has been incurred, whether by bond or otherwise, for the payment of duty, then the duties are or may become payable or recoverable under the provisions of this Act.</p>
Recovery of duty	<p><b>122.</b> Where goods are liable to duty, then the duty shall constitute a debt due to the Government and be charged on the goods in respect of which the duty is payable: and the duty shall be payable by the owner of the goods and may, without prejudice to any other means of recovery, be recovered by legal proceedings brought by the Commissioner.</p>
Effect of alteration in classification of goods. 10 of 1987, s. 5.	<p><b>123.</b> If any practice or method of procedure of customs approved by the Commissioner or arising from a ruling by the Customs Co-operation Council relating to the classification or enumeration of goods is altered with the result that less duty is thereafter chargeable on goods of the same class or description, no person shall thereby become entitled to a refund of any duty paid before the alteration took effect.</p>
Time of entry for home use determines rates of duty. 8 or 1991, s. 10.	<p><b>124.</b> (1) Subject to section 74 and subsection (3) of this section, duty shall be paid at the rate in force at the time when the goods liable to the duty are entered for home use:</p> <p>Provided that, in the case of goods imported overland, the time of entry of the goods for home use shall be deemed to be the time when the duty thereon is paid.</p> <p>(2) Except where otherwise provided in the Fourth Schedule, and subject to section 74, export duty shall be paid at the rate in force at the time when the goods liable to the duty are entered for export:</p> <p>Provided that where export duty is imposed, or the rate of existing export duty is varied, between the time goods are entered for exportation and the time of exportation of the goods, export duty</p>

shall be paid at the rate in force at the time of exportation of, the goods.

(3) Where, in accordance with section 27 (3), goods are entered before the arrival at the port of discharge of the aircraft or vessel in which the goods are imported, the duty upon the goods shall be paid at the rate in force at the time of arrival of the aircraft or vessel at the port or place of discharge.

Advisory  
committee on  
anti dumping  
5 of 1998

**125.** (1) the Minister shall, by notice in the Gazette, establish an advisory committee comprising not more than five persons, to investigate cases of dumping or subsidisation of goods exported to Kenya, and to report its findings to the Minister.

(2) the Minister shall, in regulations, prescribed the procedure to be followed by the advisory committee in conducting investigations under Subsection(1), and may impose such provisional measures as may be necessary to protect any industry in Kenya that may be threatened by such dumping or substitution:

Provided that such provisional measures shall not be imposed before the expiry of sixty days after the commencement of investigations under this section

Imposition of  
dumping and  
countervailing  
Duty  
5 of 1998

**125A** (1) Whereupon the findings of the committee appointed under section 125, the Minister is satisfied-

(a) that goods of any description are being or have been imported into Kenya in circumstances in which they are under this Act, to be regarded as having been dumped; or

(b) that some government or a public body outside Kenya has been giving a subsidy in respect of goods of any description imported into Kenya, the Minister may, where the exporter offers to increase the price of the respective goods to the extent of the dumping margin or the amount of the Subsidy, accept such offer, or may, by order in the Gazette-

(i) in the case of goods regarded as having been dumped, impose an anti-dumping duty, or

(ii) in the case of goods in respect of which a subsidy has been or is being given, impose a countervailing duty

(2) the anti-dumping duty or countervailing duty imposed under subsection (1) shall be charged in addition to any other duty for the time being chargeable on the respective goods.

Provided that-

- (a) the rate of such duty shall not exceed the dumping margin or the amount of the subsidy found to exist; and
- (b) no duty shall be imposed under this section where the Minister is not satisfied that the effect of the dumping or of the subsidy is such as to cause or threaten material injury to an established industry in Kenya or is such as to retard materially the establishment of an industry

(3) An order under subsection (1) shall specify either the country from which the goods originated or from which the goods were imported into Kenya and may include such provisions with respect to the description of the goods chargeable with duty as may appear to the Minister to be required for the purposes of this Act and, in particular, provisions limiting the description of the goods by reference to the particular persons or organisations by whom the goods were produced or who were concerned with the production of the goods in some specified manner.

Dumping and  
subsidy  
defined  
13 of 1984, s. 5  
8 of 1998, s.6.

**126.** (1) For the purposes of section 125 imported goods shall be regarded as having been dumped-

- (a) if the export price of the goods exported to Kenya is less than the comparable price, in the ordinary course of trade, for the product when destined for consumption in the exporting country;
- (b) if the importation of the goods causes injury to or retardation of a Kenyan industry

(2) References in section 125 to giving a subsidy are references to the giving of a financial contribution on the production or export of goods by the government or a public body within the exporting country in such a manner as to cause injury to the Kenyan industry, including-

- (a) direct transfer of funds such as a grant, a loan or equity infusions;
- (b) an indirect transfer of funds such as loan grant;
- (c) provision of goods or services other than the general infrastructure, or purchases of goods;
- (d) fiscal incentives, such as tax credits;

- (e) the making of payments to a funding mechanism, or directing a private body to carry out any of the functions specified above; or
- (f) any form of income or price support.

In section 125 the word “*injury*” means material injury, threat of material injury or material retardation

***Value of Imported Goods, Excisable goods, and Goods for Export***

Determination  
of value of  
imported  
goods

8 of 1985, s. 3  
4 of 1983, s. 12  
5 of 1998,s.7

127. (1) The value of imported goods, whether exempt from duty, liable to specific duty or liable to ad valorem duty, shall be as laid down in the Seventh Schedule.

(2) In the case of goods imported under a contract of sale, the price paid or payable on that sale shall be deemed to be the value:

Provided that the price is properly adjusted to take account of circumstances, which differ from a sale as, is contemplated by the Seventh Schedule.

(3) The rate of exchange to be used for determining the equivalent in Kenya currency of any foreign currency shall be the prevailing current selling rate of sight drafts as last notified by the Central Bank, or the rate applied by banks or financial institutions, whichever is the higher, when an entry is presented and accepted by the proper officer in accordance with section 127A.

(4) Notwithstanding subsection (3), the rate applicable shall be further determined by the Commissioner as the weighted average of the prevailing selling rates in force during the previous week and, subject to any official revaluation or devaluation of any currency as notified by the Central Bank, shall remain valid throughout the week.

(5) Notwithstanding Subsection (3) and (4) and section 127A, the Minister may, by notice in the Gazette, declare the rate of exchange to be used from time to time in determining the equivalent in Kenya currency of any foreign currency.

(6) Subject to subsections (3) and (4), the Commissioner may require any bank or financial institution to submit details or any information in respect of the rates of exchange of foreign currency and such details or information shall be given immediately.

(7) Any bank or financial institution which fails to comply with subsection (6) shall be guilty of an offence.

(8) Where an entry has been checked and accepted by the proper officer, the duty payable shall be paid within five days from the date of the acceptance, and in default, a new assessment of the value shall be determined in accordance with subsections (3) and (4).

Determination of value of goods for export.  
10 of 1986, s. 6  
9 of 1992, s. 10.  
4 of 1993, s. 13.  
5 of 1998, s. 8.

**127A.** (1) The value of goods for export, whether exempt from duty, liable to specific duty or liable to *ad valorem* duty, shall include--

- (a) the cost of the goods to the buyer outside Kenya;
- (b) packing charges;
- (c) transport and all other charges up to the time of delivery of the goods on board the exporting aircraft or vessel, or at the place of exit from Kenya;
- (d) any levy, cess, duty or tax.

(2) In the case of goods for re-exportation, the value shall include--

- (a) the landed cost at the time of importation;
- (b) all other charges, including transport up to the time of the delivery of the goods or, board the exporting aircraft or vessel or to the place of exit from Kenya.

(3) The rate of exchange to be used for determining the equivalent in Kenya currency of any foreign currency shall be the prevailing current buying rate of sight drafts as last notified by the Central Bank, or the rate applied by banks or financial institutions, whichever is the higher, when an entry is presented and accepted by the proper officer in accordance with section 63.

(4) Notwithstanding subsection (3), the rate applicable shall be further determined by the Commissioner as the weighted average of the prevailing buying rates in force during the previous week and, subject to any official revaluation or devaluation of any currency as notified by the Central Bank, shall remain valid throughout the week.

(5) Subject to subsections (3) and (4), the Commissioner may require any bank or financial institution to submit details or any information in respect of the rates of exchange of foreign currency and such details or information shall be given immediately.

(6) Any bank or financial institution which fails to comply with subsection (5) shall be guilty of an offence.

(7) Where an entry has been checked and accepted by the proper officer, the duty payable shall be paid within five days from the date of the acceptance, and in default, anew assessment of the value shall be determined in accordance with subsections (3) and (4).

Appraisal of  
value of  
imported  
goods, etc.  
10 of 1988, s.  
11.  
4 of 1999, s.10

**127B.** (1) Notwithstanding any other provisions of this Act, where the proper officer, or any other officer authorized by the Commissioner, has reason to believe that the value of the imported goods or goods for export or goods for re-exportation is below or above the transaction value, the proper officer or authorized person shall appraise in accordance with the methods set out in the Seventh Schedule

(2) A certificate of the appraised value given under the hand of the proper officer or other persons authorized by the Commissioner shall be prima facie evidence of the value of those goods.

(3) Upon written request, the importer shall be entitled to an explanation, in writing, from the proper officer or person authorized by the Commissioner as to the method applied in appraising the goods pursuant to this section.

(4) Where a dispute arises regarding the decision of the proper officer or other persons authorized by the Commissioner under the foregoing subsections, the importer or other person liable for the payment of duty may, within thirty days of the day he is notified of the decision, appeal to the Tribunal established under section 127 E.

(5) The Tribunal shall consider and determine every appeal made under subsection (4) shall cause his decision thereon to be served upon the appellant specifying reasons therefor.

(6) A person aggrieved by a decision of the Tribunal under subsection (5) may appeal to the High Court within fourteen days.

(7) An importer may remove goods subject to an appraisal under this section from customs authority pending final determination of the value thereof by the proper officer or other person authorised by the Commissioner upon payment of a cash deposit equivalent to the assessed duty, and any excess thereof shall be refunded within thirty days from the date of final determination of duty payable.

(8) The Commissioner shall cause to be kept records of all administrative and judicial decisions taken under this section in conformity with the Agreement on Customs Valuation.

(9) In this section, the expression “*Agreement on Customs Valuation*” refers to the agreement on Implementation of article VII of the General Agreement on Tariffs and Trade on Customs Valuation signed in Marrakesh, Morocco, on the 15<sup>th</sup> April 1994.

Value of goods  
for excise duty  
purposes  
8 1991, s. 11,  
4 of 1993, s. 14,  
6 of 1994, s 4.

**127C.** (1) The value of imported goods for purposes of levying excise duty shall be the sum of-

- (a) the value of such goods ascertained for the purpose of import duty; and
- (b) the amount of import duty, suspended duty and dumping duty if any.

(2) The value of locally manufactured goods for purposes of levying *ad valorem* excise duty shall be the ex-factory selling price.

(3) For the purposes of subsection (2), the ex-factory selling price shall include-

- (a) the cost of any wrapper, package, box, bottle or other container in which the excisable goods are packed;
- (b) the cost of any other goods contained in or attached to the wrapper, package, box, bottle or other container; and
- (c) any other cost incidental to the sale of the goods including advertising, financing, warranty, commission, transportation, markup or any other cost incurred related to delivery to the point of sale.

(4) Notwithstanding subsection (3) (b), the cost of returnable

<p>Pre-shipment inspection of imported goods 8 of 1996, s.4.</p>	<p>containers and excise stamps shall be excluded from the excisable value.</p> <p><b>127D</b> (1) Notwithstanding any other provision of the Act, the Minister may, by, notice in the Gazette, prescribe certain imported goods which shall be subject to pre-shipment inspection.</p> <p>(2) the Commissioner may appoint any person for the purposes of conducting pre-shipment inspection of the goods prescribed under subsection (1)</p> <p>(3) An appointment under subsection (2) shall be, subject to such terms and conditions as may be agreed in writing, between the Government and the appointed person</p> <p>(4) A person appointed under subsection (2) shall, on completion of pre-shipment inspection of any goods, issue a certificate of such inspection to the Commissioner and to the importer.</p> <p>(4A) Goods in respect of which a certificate has been issued under sub-section (4) shall not be subjected to any further inspection except by a proper officer</p> <p>(5) A person who, at the commencement of this section is appointed by the Minister to conduct pre-shipment inspection, shall be deemed to be a person appointed by the Commissioner and to the importer.</p> <p>(6) In this section, the expression “pre-shipment inspection” means the examination of imported goods prior to Shipment in order to ascertain the description, quality, quantity and the value of such goods.</p>
<p>Establishment of Appeals Tribunal</p>	<p><b>127E</b> (1) The Minister shall, by order publish in the Gazette, establish an Appeals Tribunal for purpose of hearing appeals under section 127B.</p> <p>(2) The Tribunal shall consist of a Chairman and not less than four but not more than six members who shall be appointed by the Minister and who shall hold office for such period and upon such terms and conditions as the Minister may determine.</p> <p>(3) The quorum for meeting of the Tribunal shall be the Chairman</p>

and two other members.

(4) All matters before the tribunal shall, in the event of a difference of opinion, be decided by the votes of the majority of the members thereof.

**127F** (1) A person shall, before filing an appeal with the Tribunal, deposit with the Commissioner the full duty assessed under section 127B.

(2) Any duty deposited with the Commissioner under subsection (1) shall, where the decision of the Tribunal or the High Court, as the case may be, is in favour of the aggrieved persons, be refunded to such person, less the amount of duty which was not disputed.

(3) On hearing an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(4) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reasons by affidavit and administer interrogations and require the person to whom the interrogations are administered to make a full and true reply to the interrogations within the time specified by the Tribunal

(5) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that the evidence would not otherwise be admissible under the law relating to evidence.

(6) The Tribunal shall have the power to award the costs of any proceedings before it and to direct that such costs be taxed in accordance with any scale prescribed for suits in the High Court or to award a specified sum of costs.

(7) All summons, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal

(8) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its

discretion, admit to be heard on behalf of the party.

(9) Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, or required to answer interrogations and who without sufficient cause-

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him; or
- (b) refuses or fails to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal, or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him.

Shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding two years or both.

(10) Where the Tribunal awards costs in any appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of costs.

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(11) Every certificate issued under subsection (10) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filled shall be deemed to be a decree of the High Court and may be executed as such provided that an order for costs against the Government shall not be enforced save in the manner provided for by the Government Proceedings Act

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(12) The Chief Justice may make rules governing appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction

(13) Where in any suit for the recovery of any tax, or other amount payable under this Act, the court is satisfied that any party to the suit has appeal to the Tribunal, the court shall on such conditions as it may

think fit stay the proceedings in the suit pending the determination of the appeal

***Computation of Duty: General***

Adjustment for fractions of a shilling.  
8 of 1991, s. 12.

**128.** Notwithstanding section 117 (1), where the total amount of duty computed with reference to any one customs document--

- (a) is five shillings or less, no import duty, suspended duty or dumping duty shall be charged;
- (b) exceeds five shillings but is less than one hundred shillings and includes a fraction of a shilling, the fraction shall be disregarded;
- (c) exceeds one hundred shillings and includes a fraction of a shilling, the fraction shall be treated as a complete shilling.

Duty computed on gross weight of package in certain cases.

**129.** Where goods liable to duty according to weight are imported in a package, and the goods are intended for sale, or are normally sold retail, in that package, then, if such case, package:--

- (a) is not marked or labelled with the net weight thereof; or
  - (b) is not commonly sold as containing, or as reputed to contain, a specific quantity or weight,
- and in either case, the owner of the goods is unable to satisfy the proper officer of the correct net weight thereof, then; the goods shall be liable to duty according to the gross weight of the package and its contents.

Duty computed on reputed quantity in certain cases.

**130.** Where goods liable to a specific duty are imported in a package and the goods are intended for sale, or are normally sold retail, in that package, then, if the package-

- (a) is marked or labelled as containing a specific quantity of the goods; or .
  - (b) is commonly sold as containing, or as reputed to contain, a specific quantity of the goods,
- the package shall be deemed to contain not less than the specific quantity.

Commissioner may fix litre equivalent of other liquid measurement.

**131.** Where goods liable to duty according to liquid measurement are imported in a package and-

- (a) the goods are intended for sale, or are normally sold, in, that package; and
- (c) the package is of a- standard capacity according to a liquid measurement other than a liquid measurement based on fractions or multiples of a litre,

then the Commissioner may, by notice in the Gazette, declare that the package, having a capacity within such limits as may be specified in the notice, shall be deemed to contain such fractions or multiples of a litre as may be specified in the notice.

Allowance to tare.

**132.** For the purpose of the computation of the duty to which goods are liable, the Commissioner may fix the allowance for tare which may be granted and the conditions under which any such allowance may be granted.

Duty on package in certain cases.

**133.** Where goods are imported or exported in a package which, in the opinion of the Commissioner--

(a) is not the normal or proper package for those goods;

(c) is designed for use, subsequently to importation or exportation, other than as a package for any goods of the same or a similar nature,

then, subject to any provision to the contrary in this Act, the package shall be liable to duty as if it were a separate article and shall, for all the purposes of this Act, be deemed to be a separate article.

#### *Computation and Payment of Excise Duty on Spirits*

Time of delivery determines rate of excise duty.  
10 of 1986, s. 7.  
4 of 1996,s.5.

**134.** (1) The excise duty on spirits shall become due and shall be charged at the rate in force when the spirits liable to duty are delivered from the distillery or the distiller's warehouse; and the duty shall, subject to any remission or rebate thereof which may be granted in accordance with the provisions of this Act, be paid by the distiller, or secured to the satisfaction of the proper officer, on its becoming due.

(2) Notwithstanding subsection (1), where spirits are removed from a distillery or distiller's warehouse, the duty shall become due and shall be charged at the rate in force when the spirit liable to the duty are delivered from the rectifier's warehouse, and the duty shall be paid by the rectifier, or secured to the satisfaction of the proper officer, on its becoming due.

(3) The Commissioner may permit the payment of duty under subsection (1) and (2) to be deferred, to a date not later than the twentieth day of the month following that on which it became due.

Duty on spirits attenuation charge.

**135.** (1) In the case of a distillery where spirits are manufactured by distillation of fermented liquor, the excise duty on spirits shall, in addition to being charged on the spirits distilled, be chargeable in

respect of each distillation period in accordance with the following provisions of this section.

(2) There shall be calculated the quantity of spirits at proof capable of being produced from any wort and wash made at the distillery on the assumption that from every one hundred litres of wort and wash one litre of spirits at proof will be produced for every five degrees of attenuation, that is to say for every five degrees of difference between the highest gravity of the wort and the lowest gravity of the wash before distillation, and so in proportion for any less number of litres of wort and wash or any less number of degrees of attenuation.

(3) The gravity of the wort or wash for the purposes of subsection (2) shall be taken as that declared by the distiller:

Provided, that if either gravity is found by the proper officer before distillation, and the gravity so found is, in the case of wort, higher, or, in the case of wash, lower than that declared by the distiller, the gravity to be taken shall be that so found by the proper officer.

(4) There shall be ascertained the quantity computed at proof of the spirits and feints produced at the distillery after deducting the feints remaining at the end of the last preceding distillation period.

(5) If the quantity calculated under subsection (2) exceeds the quantity ascertained under subsection (4), the excise duty on spirits shall be charged and become payable immediately on that excess:

Provided that the Commissioner may make such allowance as in his opinion is reasonable from any charge under this section on proof to his satisfaction that the charge arises wholly or in part on account of the removal of wash for the separation of yeast.

(6) In this section, the expression "distillation period" means the period prescribed by regulations for the purpose of taking account of feints and spirits produced.

Ascertainment  
of strength,  
weight, and  
volume spirits.

**136.** (1) For the purpose of this Act the strength, weight or volume of spirits shall be ascertained in accordance with the provisions of this section.

(2) Spirits shall be deemed to be at proof if the volume of the ethyl

alcohol contained therein made up to the volume of the spirits with distilled water has a weight equal to that of twelve-thirteenths of a volume of distilled water equal to the volume of the spirits, the volume of each liquid being computed as at 10.55 degrees Centigrade.

(3) The expressions "degree of proof", "degree over proof" and "degree under proof" shall be construed by reference to a scale on which one hundred degrees denotes the strength of spirits at proof, and-

- (a) One hundred and one degrees, or one degree over proof, denotes the strength of spirits which would be at proof if there were added thereto such quantity of distilled water as would increase by one per cent the volume of the spirits computed as at ten degrees Centigrade;
- (b) Ninety-nine degrees, or one degree under proof, denotes the strength of spirits which would be at proof if there were removed therefrom such quantity of distilled water as would reduce by one per cent the volume of the spirits computed as at ten degrees Centigrade, and so in proportion for any other number of degrees.

(4) The equivalent at proof of spirits not at proof shall, for the purposes of this Act, be deemed to be their volume-

- (a) Multiplied by the number of degrees of proof representing their strength; and
- (b) Divided by one hundred.

(5) The Commissioner may make regulations prescribing the means to be used for ascertaining for any purpose the strength, weight or volume of spirits, and any such regulations may provide that in ascertaining for any purpose the strength of spirits any substance contained therein which is not ethyl alcohol or distilled water may be treated as if it were, and different regulations may be made for different purposes.

(6) This section shall apply to denatured spirits and fermented liquor as it applies to spirits.

#### *Payment of Duty on Excisable Goods other than Spirits*

**137.** The duty on locally manufactured excisable goods other than spirits shall become due and shall be charged at the rate in force when the goods liable to duty are delivered from the stock room of the licensee; and the

Time of  
delivery  
determines  
rate of excise

duty, etc.

8 of 1991,s. 13.  
8 of 1996,s.5A

duty shall, subject to any remission or rebate thereof which may be granted in accordance with the provisions of this Act, be paid by the licensee on its becoming due:

Provided that the Commissioner may permit the payment to be deferred to a date not later than the twentieth day of the month following that on which it became due.

### *Exemption and Remission of Duty.*

Power of  
Minister to  
refund of  
duties

9 of 1992, s. 10,  
4 of 1993, s. 15  
6 of 1994, s. 5,  
13 of 1995. s. 37  
5 of 1998,s.9.  
4 of 1999,s.11.

**138** (1) Subject to subsection (2) and (5), the Minister may, by order in the Gazette, remit in whole or in part, duty payable by any person on goods, aircraft, vessels or vehicles imported by that person if he is satisfied that a is in the public interest to do so.

(2) Remission under subsection (1) shall only be in respect of-

(a) *Deleted by 4 of 1993, s. 15,*

(b) *Deleted by 4 of 1993, s. 15,*

(c) Such other goods, including passenger motor vehicles and computers (excluding motor vehicles of a seating capacity of up to twenty six persons, building materials, audio and audiovisual electronic equipment, spare parts, edible vegetable fats and oils, office equipment, stationery, office furniture, textiles, new and used clothing, footwear, maize, wheat, sugar, milk and rice) donated or purchased for donation by any person to non-profit making organizations or institutions approved by the Government, for their official use or for free distribution to poor and needy persons, or for use in medical treatment, educational, religious or rehabilitation work or for other Government approved projects:

Provided that where maize, wheat, sugar, milk, edible vegetable fats and oils, rice, textiles, new and used clothing and footwear are imported during periods of civil strife, national calamity or disaster declared under any law for the time being in force, or where they are intended for use in officially recognized refugee camps in Kenya, duty in respect thereof may be remitted in full under this section;

(d) Raw materials for use in the manufacture of insecticides, fungicides and similar products, including component parts

used in the manufacture of agricultural and horticultural equipment.

- (e) Capital equipment and machinery imported solely for use in the manufacture of goods in a licensed customs bonded factory for export only;
- (f) goods, including motor vehicles and aircraft, imported or purchased by any company which has been granted an oil exploration or oil prospecting licence in accordance with a production sharing contract with the Government of Kenya and in accordance with the provisions of the Petroleum (Exploration and Production) Act; and
- (g) official aid funded projects, subject to a security being given to the Commissioner in accordance with Part XII where the project is being executed by a contractor other than the official aid fund agency.

(3) Pending the publication of an order under subsection (1), the Minister may direct the Commissioner to remit duty as though the order had actually been published:

Provided that the order shall be published within ninety days from the date the Minister issues the directive under this subsection; and the fact that the order is not published shall not affect the validity of anything done pursuant thereto during the period of ninety days

(4) Where goods in respect of which duty is remitted under this section are disposed of locally in a manner inconsistent with the purpose for which remission was granted, the provisions of section 155 shall apply.

Provided that where the remission granted under subsection (1) has an expiry date it shall expire on the date specified therein or the 30th September 1992, whichever is the earlier.

Remission of excise duty.  
10 of 1980, s. 2,  
8 of 19 5, s. 4,  
8 of 1991, s. 15,  
9 of 1992, s. 12.  
8 of 1997,s.7.

- 139.** (1) Subject to the provisions of this Act, the Commissioner may remit any excise duty payable in respect of goods where he is satisfied-
- (a) That a person is, in accordance with the provisions of this Act, entitled to remission;
  - (b) That the goods were destroyed by accidental fire, or other unavoidable cause, while in a building, room or place which has been entered in accordance with this Act and which is in the factory in which they were manufactured;

- (c) That the goods have, with the prior permission of the Commissioner, been destroyed by the licensee under the supervision of a proper officer prior to their leaving any building, room or place which has been entered in accordance with this Act and which is in the factory in which they were manufactured;
- (d) that the goods were duly exported or shipped for use as stores for any aircraft or vessel:
- Provided that remission shall be granted only to the licensee and shall not be granted-
- (i) Where the goods are so exported or shipped in a vessel of less than ten tons register;
  - (ii) Where the amount of the duty thereon is less than fifty shillings; or unless previous notice of exportation or shipment is given to the proper officer and the goods are produced for examination by the proper officer at the port or place of exportation;
  - (iii) Unless previous notice of exportation or shipment is given to the proper officer and the goods are produced for examination by the proper officer at the port or place of exportation;
- (e) that the goods were delivered by the manufacturer thereof-
- (i) to the Navy, Army and Air Force Institutes;
  - (ii) to the Armed Forces Canteen Organization; or
  - (iii) to privileged bodies and persons described in paragraphs (1) and (2) of item 7 of part A of the Third Schedule;
- (f) that in the case of spirits-
- (i) they have been used by a denature at his factory for the manufacture of methylated spirits in accordance with this Act;
  - (ii) they have been delivered direct from a distillery or distiller's warehouse, in such quantities and under such conditions as he may determine, to a person who will use them for the fortification of wine or other excisable beverages or for use in industry or manufacture (other than the manufacture or preparation of other beverages, perfumery or toilet preparations) in which the use of spirits is required, and if he is further satisfied that the use for the fortification of wine or other excisable beverages or in that industry or manufacture of denatured or methylated spirits is unsuitable or detrimental;

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| <p>Cap. 253.</p> <p>Cap. 366,</p> <p>Cap.244.</p> | <ul style="list-style-type: none"> <li>(iii) they have been used in the manufacture of specially denatured spirits by a denature at the denaturer's factory, and if he is further satisfied that the specially denatured spirits have been delivered from the factory, in such quantities as he may determine, to a person, and for a purpose, approved by him;</li> <li>(iv) they have been delivered from a distillery or distiller's warehouse, in such quantities and in accordance with such conditions as he may determine, for use for medical, scientific or educational purposes, to one of the following persons- <ul style="list-style-type: none"> <li>(A) a medical practitioner or a dentist registered under the Medical Practitioners and Dentists Act;</li> <li>(B) a registered veterinary surgeon within the meaning of the Veterinary Surgeons Act;</li> <li>(C) a registered pharmacist within the meaning of the Pharmacy and Poisons Act;</li> <li>(D) a chemist, holding qualifications approved by the Commissioner, who is in charge of a chemical laboratory approved by the Commissioner;</li> <li>(E) the curator of a public museum;</li> <li>(F) the principal of an educational institution approved by the Commissioner;</li> <li>(G) any other person approved for the purpose by the Commissioner by notice in the Gazette;</li> </ul> </li> <li>(v) they have been delivered for denaturing in accordance with this Act or, in the case of compounded spirits, deposited in a bonded warehouse for exportation or shipment for use as stores for an aircraft or vessel in accordance with this Act.</li> <li>(vi) they have been used for the manufacture of power alcohol and if he is further satisfied that the power alcohol has been delivered from the factory in such quantities as he may determine to hydrocarbon warehouse for the manufacture of gasohol.</li> </ul> <p>(2) No remission of excise duty under subsection (1) shall be granted unless the person claiming remission presents a claim in the prescribed manner within a period of twelve months from the date when the duty</p> |
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became due.

(3) The Commissioner shall, subject to the provisions of this Act, refund any excise duty paid on goods to which a remission applies under this section.

Exemption from certain duties of goods remaining on board.  
8 of 1991 s. 16.  
Exemption from certain duties on goods entered for exportation, etc.  
4 of 1993, s. 16,  
6 of 1994, s. 6,  
8 of 1996, s. 6

Cap. 517.

**140.** Subject to the provisions of this Act, goods remaining on board and exported in the aircraft or vessel in which they were imported, whether as stores or otherwise, Shall be exempt from liability to duty.

**141.** (1) Subject to the provisions of this Act, goods entered under bond and proved to the satisfaction of the Commissioner to have been duly--

- (a) exported, transhipped or exported in transit; or
- (b) used as stores for aircraft or vessels; or
- (c) used in the blending of lubricating base oils; or
- (d) used in the manufacture under bond subject to such conditions and limitations as may be specified; or
- (e) exported from a bonded factory; or
- (f) used in an export processing zone subject to the conditions and limitations specified in the Export processing Zones Act; or
- (g) exported from an export processing zone to any place outside Kenya shall be exempt from duty.

(2) Subject to this Act and to the regulations made thereunder, goods entered under bond-

- (a) for use in the manufacture of goods for export, shall be exempt from duty where it is proved to the satisfaction of the Commissioner that the finished goods have been exported; or
- (b) for use in the manufacture of goods for home use, shall be exempt from duty, if the Commissioner is satisfied that the finished goods are not liable to duty in the First Schedule but excluding fuels; or
- (c) for the manufacture of goods for use in official aid funded projects, shall be exempt from duty where the Commissioner is satisfied that the finished goods have been used in that project; or
- (d) for use in the manufacture of other goods for home use where it is proved to the satisfaction of the Commissioner that the finished goods have been supplied for the official use of the

Kenya Armed Forces;

- (e) for use in the manufacture of goods shall be exempt from duty if the Commissioner is satisfied that they have been supplied as ship stores to the national carrier or any airline designated under an air services agreement between the Government and a foreign government;
- (f) for use in the manufacture of plastic sheeting for agricultural, horticultural or floricultural use, where the Commissioner is satisfied that the goods will be supplied in accordance with item 28 of Part B of the third schedule;

(3) No exemption from suspended duty or dumping duty shall be granted in respect of goods to which this section applies except goods entered for transshipment or in transit or under subsection 1) (f) and (g).

(4) Any person who diverts any goods manufactured for export to home use without payment of the duty due thereon shall be guilty of an offence and shall be liable to a fine not exceeding the higher of one million five hundred thousand shillings or three times the value of the goods, or to imprisonment for a term not exceeding three years, or to both.

Exemption  
from certain  
duties of  
certain re-  
imports.  
8 of 1991, s. 18.

**142.** (1) Subject to the provisions of this Act, where goods which are liable to duty have been exported from and are subsequently re-imported into Kenya then, if the Commissioner is satisfied-

- (a) that any duty to which the goods were liable prior to their exportation has been paid and either—
  - (i) no drawback of the duty was allowed on exportation; or
  - (ii) if allowed, the drawback has been repaid to the proper officer; and
- (b) that the goods have not been subjected to any process after being so exported, or, if so subjected, that their form or character has not been changed and that the goods at the time of re-importation are not liable to duty *ad valorem*; and
- (c) that the owner of the goods prior to exportation gave notice thereof in writing to the proper officer and produced the goods for inspection by him at the port or place from which they were exported,

the goods shall, save as otherwise provided in this Act, be exempt from liability to duty:

Provided that the Commissioner may in any particular case direct that this section shall apply to goods notwithstanding that paragraph (c) has not been complied with if he is satisfied that a failure so to direct would involve hardship.

(2) In the case of goods to which subsection (1) would apply but for the fact that at the time of re-importation they are liable to duty *ad valorem* the goods shall on re-importation be chargeable with duty as if the value of the goods were only the amount of the increase in value attributable to the process; and for the purpose of ascertaining the increase in value, any sum paid for the execution of the process shall, unless the Commissioner otherwise directs, be taken to be the amount of the increase

Exemption  
from certain  
duties of  
temporary  
imports.  
10 of 1988, s. 12  
8 of 1991, s. 19,  
4 of 1993, s. 17.

**143.** (1) Subject to the provisions of this Act, goods imported in accordance with this section for a temporary use or purpose only shall be exempt from liability to duty.

(2) No goods shall be exempt from liability to duty under this section unless the proper Officer has given permission-

- (a) Unless he is satisfied that the goods are imported for a temporary use or Purpose only; and
- (b) Unless the owner thereof has deposited, or given security for, the amount of the duty to which the goods would otherwise be liable:

Provided that, notwithstanding subsection (4), the commissioner may, in the case of filming equipment of a non-consumable nature, accept an undertaking by the importer to export the equipment within the period stipulated in this section in lieu of duty deposit or security subject to the payment of a non-refundable fee of one per cent *ad valorem* or such other fee as may be prescribed.

(3) Where the proper officer gives permission for the importation of goods under this section, he may impose such conditions as he thinks fit and, whether or not he imposes any conditions, it shall be a condition of importation that the goods shall be exported within such period not exceeding twelve months from the date of importation, as is consistent with the purpose for which the goods are imported unless the Minister otherwise directs.

(4) Where the conditions of the importation of the goods have been

complied with, then, on the exportation of the goods, any deposit or security given under subsection (2) shall be refunded or discharged, as the case may be.

(5) Where a condition of the importation of goods has been contravened, the owner shall be guilty of an offence and shall be required to pay a penalty equal to the duty which was due and payable on the goods on the date of importation.

(6) Notwithstanding subsection (5), it shall be a condition that the owner exports the goods within such period, not exceeding sixty days, from the date of the payment of the penalty, as the proper officer may allow, in default of which the goods shall be liable to forfeiture.

(7) Subject to subsection (5), sections 14 and 15, and notwithstanding subsection (6), the Commissioner may, upon receipt of an application from the owner and prior to the expiry of the period allowed for temporary importation, allow entry of the goods for home use if he is satisfied with the reasons given.

(8) The Minister may, by notice in the Gazette, declare that the goods specified in the notice shall not be imported in accordance with this section, or may only be so imported subject to the goods being liable to such proportion of the duty thereon as may be specified in the notice.

Remission of certain duties on lost or destroyed goods.

**144.** Where goods are lost or destroyed by accident either-

- (a) on board an aircraft or vessel; or
- (b) in removing, loading, unloading, or receiving them into, or delivering them from, any Customs area or warehouse; or
- (c) in a customs area or warehouse,

before they are delivered out of customs control to the owner thereof, then, if the Commissioner is satisfied that the goods have not been and will not be consumed in Kenya, he may remit the duty payable in respect of those goods.

#### *Refund, Rebate, and Drawback*

Refund of certain duties to privileged institutions

**145.** (1) The Minister may, by order in the Gazette, direct that, in the case of goods specified therein imported by or on behalf of any person specified therein, any duty paid in respect of the goods

and personnel,  
etc.  
8 of 1991, s. 20

shall be refunded, subject to such terms and conditions as may be prescribed in the order or in regulations.

(2) The Commissioner may make a refund of any duty paid in respect of goods imported into Kenya, subject to such conditions as he may determine-

- (a) in pursuance of an agreement entered into between the Government of Kenya and a government to which section 118 refers;
- (b) where the goods are purchased by the Navy, Army and Air Force Institutes for resale;
- (c) where the goods are motor spirit or products ordinarily used as such or lubricating oil, and are purchased for official use in vehicles of the Navy, Army and Air Force Institutes or of the Commonwealth War Graves Commission;
- (d) where the goods are motor spirit or products ordinary used as such or lubricating oil, and are purchased by-
  - (i) an embassy, consulate or diplomatic mission of another country for its official use;
  - (ii) a member of a diplomatic mission or a consular officer who is a permanent and pensionable member of the foreign service of another country, for his personal use, and that other country accords a similar privilege to permanent members of a Kenya diplomatic mission or a permanent Kenya consular officer;
  - (iii) one of the international organizations named in the Ninth Schedule for its official use;
  - (iv) a Secretary-General, a Deputy or Assistant Secretary-General or a Director-General, of one of the organizations listed in the Ninth Schedule for his personal use; or
  - (v) any other international organization prescribed by the Minister, by order in the Gazette, for the purposes of this subsection, or its entitled personnel.

(3) No refund of duty shall be made under subsection (2) unless the person claiming the refund presents a claim within a period of twelve months from the date of the, payment of the duty.

(4) The Minister may, by order in the Gazette, amend the Ninth Schedule.

Refund of duty on pillaged, etc., goods and on duty paid in error.  
8 of 1991, s. 21

**146.** (1) Subject to this section and any regulations, the Commissioner may grant a refund-

- (a) of any duty which has been paid in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to customs control;
- (b) of any duty which has been paid in error;

(2) No refund of duty shall be granted under subsection (1) unless the person claiming the refund presents a claim within a period of twelve months from the date of the payment of the duty.

(3) The Commissioner shall, subject to the provisions of this Act, refund any duty paid on goods in respect of which an order remitting the duty has been made under section 138:

Provided that the refund shall not be made in respect of goods imported prior to the relevant date specified in such order.

Refund of certain duties on returned or destroyed goods,  
10 of 1986, s. 8.  
8 of 1991, s. 20.

**147.** (1) Subject to section 146 (2) and to such conditions as the Commissioner may see fit to impose, where it is shown to the satisfaction of the Commissioner--

- (a) that goods were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract; and
  - (b) that the importer with the consent of the seller either-
    - (i) Returned the goods unused to the seller and for that purpose complied with the provisions of section 64 as to entry as if they had been goods to which that section applies; or
    - (ii) Destroyed the goods unused,
- the commissioner shall refund any duty paid on the importation of the goods.

(2) No refund of duty shall be granted under subsection (1) unless the person claiming the refund presents a claim within a period of twelve months from the date of the payment of the duty.

(3) Nothing in this section shall apply to goods imported on approval, or on sale or return, or other similar terms.

Rebate of

**148.** (1) Where goods imported into Kenya are damaged before the goods are

certain duties  
on damaged  
goods

delivered out of customs good, control, then, subject to the provisions of this section, a rebate of the duty payable in respect of the goods may be allowed in such amount as, in the opinion of the Commissioner, is in proportion to the damage sustained by the goods.

(2) No rebate of duty shall be allowed under this section in respect of goods (not being goods to which section 154 applies) except where the proper officer is satisfied that the carrier or insurer of the goods has made an allowance to the owner in respect of the damage; and in no case shall the rebate exceed such proportion of the duty as the amount of the allowance so made bears to the value, calculated in accordance with section 127, of the undamaged goods.

Rebate of  
excise duty  
8 of 1991, s. 23.

**149.** (1) Subject to the provisions of this Act, the Commissioner may grant a rebate of any duty payable in respect of locally manufactured excisable goods where he is satisfied that a person is, in accordance with the provision of this Act, entitled to the rebate.

(2) No rebate of duty shall be granted unless the person claiming the rebate presents a claim in the prescribed manner within a period of twelve months from the date when the duty became due.

**150. Repealed by 8 of 1991, s. 24.**

Drawback of  
certain duties  
on exportation.  
8 of 1991, s. 25.

**151.** (1) Subject to this section, drawback of duty, may on exportation or the performance of such conditions as may be prescribed, be allowed in respect of such goods, in such amount and on such conditions as may be prescribed.

(2) Where the owner of goods claims, or proposes to claim, drawback in respect thereof, then, as a condition to the grant of drawback, he shall-

(a) enter the goods in the prescribed form and in the prescribed manner and produce the goods for examination by the proper officer before the exportation thereof or the performance of the conditions on which drawback is allowed; and

(b) make and subscribe a declaration on the prescribed form to the effect that the conditions under which drawback may be allowed have been fulfilled and, in the case of goods exported or put on board an aircraft or vessel for use as stores—

(i) that the goods have actually been exported or put on board for use as stores; and

- (ii) that the goods have not been re-imported and are not intended to be re-imported into Kenya; and
  - (iii) that the owner at the time of the entry of the goods for drawback was, and continues to be, entitled to drawback; and
- (c) present his claim for drawback within a period of twelve months from the date of the exportation of the goods or the performance of the conditions on which drawback may be allowed.

- (3) Drawback shall not be allowed in respect of goods where-
- (a) the value of the goods for home use is less than the amount of the drawback which may be otherwise allowed; or
  - (b) the import duty thereon was less than five hundred shillings.

(4) Where the proper officer is satisfied that goods under drawback, after being duly put on board an aircraft or vessel for exportation or for use as stores—

- (a) have been destroyed by accident on board the aircraft or vessel; or
- (b) have been materially damaged on board the aircraft or vessel; and that the goods have, with the permission of the proper officer, been discharged at a port or place within Kenya and abandoned to the customs,

then drawback may be allowed in respect of those goods as if the goods had actually been exported or used as stores.

Duties to apply proportionately for refund, rebate, etc.

**152.** Where duty is imposed, or remission, rebate or drawback thereof is allowed, under the provisions of this Act on goods according to a specified weight, measure, number or quantity, then the duty, or remission, rebate or drawback, shall be deemed to apply in the same proportion to any greater or less weight, measure, number or quantity, as the case may be, unless specific provision is made to the contrary under this Act: provided that in computing the duty imposed on, or any remission or rebate allowable on, beer, fractions of a litre shall be disregarded.

Refund of excise duty on compounded spirits in bonded warehouses.

**153.** (1) Where compounded spirits have been deposited in a bonded warehouse, the amount of any refund of excise duty payable on the deposit shall be calculated by reference to the quantity of the spirits computed at proof and shall be an amount equal to the excise duty at the appropriate rate chargeable on the same quantity of spirits at the time when excise duty was paid or secured on the spirits from which

the compounded spirits were compounded.

(2) Compounded spirits warehoused under section 104 shall upon delivery from a bonded warehouse for home use be chargeable with excise duty at the rate in force at the time of delivery.

### *Miscellaneous Provisions*

Derelict goods,  
etc., liable to  
duty  
8 of 1991, s. 26.

**154.** Goods brought or coming into Kenya by sea otherwise than as cargo, stores or baggage carried in a vessel shall be liable to duty and to the provisions of this Act as if they were goods imported in the normal manner; and, if a question arises as to the origin of the goods, they shall be deemed to be the produce of such country as the Commissioner may on investigation determine.

Goods  
imported duty  
free liable to  
certain duties  
on disposal  
8 of 1991, s. 27,  
6 of 1994, s. 7.

**155.** (1) Where goods liable to duty have been imported or purchased prior to entry for home use by or on behalf of a person either free of duty or at a reduced rate of duty, and the goods are subsequently disposed of in a manner inconsistent with the purpose for which they were granted relief from duty, then unless the Minister otherwise directs, they shall on disposal be liable to duty at the rate applicable to goods of that class or description at the time of disposal;

Provided that this subsection shall not apply where that person dies and the ownership of such goods is transferred by way bequest to or inheritance by another person.

(2) Where it is proposed to dispose of goods to which subsection (1) applies, then the person responsible for the disposal of the goods shall, unless the Minister otherwise directs, furnish the Commissioner with the particulars of the proposed disposal and shall cause the duty thereon to be paid.

(3) Subject to this section, where any goods to which subsection (1) applies are possessed by any person in satisfaction of any claim due from the importer or purchaser, that person shall be liable to pay the duty levied on the goods as if it were duty due and payable by that person but nothing in this subsection shall absolve the importer or purchaser from payment of the duty on the goods.

(4) Where goods to which subsection (1) applies are disposed of without the payment of the duty to which they are liable, then they shall

be liable to forfeiture.

(5) A person who knowingly disposes of or knowingly acquires goods to which subsection (1) applies without the duty thereon having been paid in accordance with the provisions of this section shall be guilty of an offence.

Excisable goods granted remission, etc., liable to duty on disposal.

**156.** (1) Subject to the provisions of this Act, where excisable goods in respect of which remission, rebate or refund of duty has been granted are subsequently disposed of liable to duty in a manner inconsistent with the purpose for which the remission, rebate or refund was granted, then, unless the Minister otherwise directs, the excisable goods shall thereupon be liable to the duty which would have been paid thereon if the remission, rebate or refund had not been granted.

(2) Where a person in possession of excisable goods in respect of which remission, rebate or refund of duty has been granted for any purpose proposes to dispose of the goods for a purpose inconsistent with the purpose for which the remission, rebate or refund was granted, then he shall, unless the Minister otherwise directs, furnish the Commissioner with the particulars of the proposed disposal and shall pay the duty thereon.

(3) Where excisable goods to which subsection (1) applies are sold or otherwise disposed of without payment of the duty to which they are liable, and then the goods shall be liable to forfeiture.

(4) A person who knowingly disposes of, or knowingly acquires, excisable goods to which subsection (1) applies without the duty thereon having been paid in accordance with the provisions of this section, shall be guilty of an offence.

Excisable goods liable to duty on re-importation.

**157.** Subject to the provisions of this Act, where remission, rebate or refund of duty has been granted in respect of excisable goods which have been exported or shipped for use as stores for an aircraft or vessel and the excisable goods are subsequently unloaded in Kenya for home use, then the excisable goods shall be liable to duty at the rate in force at the time of unloading.

Short levy or erroneous

**158.** (1) Where duty has been short levied or erroneously refunded, then the

refund.  
14 of 1982, s. 5.

person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was so short levied or erroneously refunded as the case may be, were liable:

Provided that the proper officer shall not make any such demand after five years from the date of the short levy or erroneous refund unless the short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short levied or to whom the refund was erroneously made.

(2) Where, on demand, a person who should have paid the amount short levied or to whom the refund has been erroneously made fails to pay the amount short levied or to repay the amount erroneously refunded, then the Commissioner may order that any other entries or other documents presented by that person or his agent shall not be accepted by the customs, or may revoke or suspend that person's licence until the duty short levied or erroneously refunded has been paid or repaid.

Commissioner  
may refrain  
From  
recovering  
duty in certain  
cases.  
9 of 1992, s. 13.

**158B.** (1) Notwithstanding the provisions of this Act, in any case where the Commissioner is of the opinion that he should refrain from recovering duty from any person by reason of impossibility, or undue difficulty or expense of recovery of the duty, the Commissioner may refrain from recovering the duty in question and thereupon liability to the duty shall be deemed to be extinguished or abandoned.

(2) Where the Commissioner has decided (to refrain from recovering duty under Sub-section (1), he shall report that decision in writing to the Minister as soon as possible after the 30th June next following his decision.

(3) Where a has been referred to him, and where he considers it appropriate, the Minister may, in writing, direct the commissioner to-

- (a) take such action under this section as the Minister may deem fit; or
- (b) obtain the direction of the court upon the case.

Disputes  
8 of 1991, s. 28.

**159.** (1) If, before the delivery of imported or excisable goods from customs control, a dispute arises as to whether any or what duty is payable on those goods, the importer or excise licensee shall pay the amount demanded by the proper officer but may, not later than six months after the date of payment, file a suit in court for the determination of the matter in dispute:

Provided that for the purposes of this section, locally manufactured excisable goods delivered prior to payment of duty under sections 134 and 137 shall be deemed to be under customs control until duties are paid in full.

(2) If in a suit referred to in subsection (1) the court determines that a lesser or no amount was properly payable in respect of duty on the goods, the amount overpaid shall be repaid by the Commissioner.

(3) Where a dispute arises as to the amount of drawback payable in respect of goods, the exporter shall receive the amount of drawback allowed by the proper officer but may, not later than six months after the date of the receipt of the drawback, file a suit in court for the determination of the matter in dispute.

(4) If in a suit referred to in subsection (3) the court determines that a greater amount was properly payable in respect of drawback, the amount underpaid shall be paid by the Commissioner.

(5) Where the court determines that a lesser or no amount was properly payable in respect of duty, or a greater amount was properly payable in respect of drawback, no officer who has acted in good faith shall be liable to legal proceedings arising out of his determination of the amount payable in respect of duty or in respect of drawback.

## **PART XII-PROVISIONS RELATING TO SECURITIES**

Commissioner  
may require  
security.  
13 of 1984, s. 6.

**160.** (1) The commissioner may require a person to give security for the due compliance by that person with this Act and generally for the protection of the customs and excise revenue; and, pending the giving of security in relation to goods subject to customs control, the Commissioner may refuse to permit delivery or exportation of the goods or to pass any entry in relation thereto or to issue an excise licence.

General provisions relating to giving of security.

(2) For the purposes of subsection (1) "Customs and Excise revenue" includes a cess, levy, imposition, tax or surtax imposed on goods under any written law.

- 161.** (1) Where security is required to be given under this Act, then the security may be given to the satisfaction of the Commissioner either--
- (a) By bond, in such sum and subject to such conditions and with such sureties as the Commissioner may reasonably require; or
  - (b) By cash deposit; or
  - (c) Partly by bond and partly; by cash deposit,

(2) Where security is required to be given under this Act for any particular purpose, then the security may, with the approval of the Commissioner, be given to cover any other transactions which the person giving the security may enter into within such period as the Commissioner may approve.

(3) All bonds required to be given under this Act shall be so framed that the person giving the bond, and any surety thereto, is bound to the Commissioner of Customs and excise by that name for the due performance of the conditions of the bond; and all bonds may, unless sooner discharged by the due performance of the conditions thereof, be discharged by the Commissioner on the expiration of three years from the date thereof, but without prejudice to the right to the Commissioner to require fresh security.

(4) Where a bond given under this Act is discharged, then the Commissioner shall cause the bond to be cancelled and an endorsement to that effect made thereon.

(5) A bond given under this Act shall, notwithstanding that the bond or any surety thereto is given by a person under the age of eighteen years, be valid and enforceable as if it were so given by a person of full age.

- 162.** (1) Without prejudice to the rights of a surety to a bond given under this Act against the person for whom he is surety, a surety shall for all the purposes of a bond be deemed to be the principal debtor and according the surety shall not be discharged, nor his liability affected, by the giving of time for payment, or by the omission to enforce the bond for a breach of any conditions thereof, or by any other act or omission which would not have discharged the bond if he had been

- the principal debtor.
- (2) If a person being a surety --
- (a) Dies; or
  - (b) Becomes a bankrupt or enters into an arrangement or composition with, or for the benefit of, his creditors; or
  - (c) Departs from Kenya without leaving sufficient property therein to satisfy the whole amount of the bond, the Commissioner may require the person giving the bond to enter into fresh security.
- 8 of 1983, s. 4. Enforcement of bond.
- 163.** (1) Where the conditions of a bond have not been complied with then the Commissioner may by notice in writing forthwith require the person who has given security under it to pay to the Commissioner the amount of the security within one month of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid.
- (2) A person against whom the Commissioner has enforced payment of a security under subsection (1) may, if aggrieved by such enforcement, file a suit in court for determination of the matter, within six months of the enforcement:
- Provided that prior to filing the suit, such person shall deposit with the Commissioner the whole amount of duty demanded.
- (3) Nothing in this section shall, unless the Commissioner otherwise allows, absolve the person who has given security under section 160 from the obligations entered into by him under this Act or under any other law.

### PART XIII--CUSTOMS AND EXCISE AGENTS

- Liability of duty authorized agent.
- 165.** A duly authorized agent who performs an act on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner of the goods and shall accordingly be personally liable for the payment of any duties to which the goods are liable and for the performance of all acts in respect of the goods which the owner thereof is required to perform under this Act; but nothing herein contained shall relieve the owner of the goods from that liability.
- Liability of owner for acts of duly authorized agent.
- 166.** An owner of goods who authorizes an agent to act for him in relation to those goods for any of the purposes of this Act shall be liable for the acts and declarations of the duly authorized agent and may accordingly be prosecuted for an offence committed by the agent in relation to the goods as

if the owner had himself committed the offence:

Provided that--

(i) an owner shall not be sentenced to imprisonment for an offence committed by his duly authorized agent unless the owner actually consented to the Commission of the offence;

(ii) Nothing herein contained shall relieve the duly authorized agent from liability to prosecution in respect of the offence.

Agents  
appointed by  
the  
commissioner  
14 of 1982, s.  
7  
6 of 1994, s. 8.

**166A.** (1) The Commissioner may, by written notice (in this subsection called the agent) appoint him to be the agent of another person (in this subsection called the principal) for the purposes of collecting duty due under this Act from the principal where the Commissioner is satisfied that the agent--

(a) Owes or is about to pay money to the principal;

(b) Holds money for or on account of the principal;

(c) Holds money on account or some other person for payment to the principal;

(d) Has authority from some other person to pay money to the principal;

(e) Holds goods belonging to the principal which are liable to duty and on which duty has not been paid, and shall in the notice specify the amount of duty to be collected by the agent, which amount shall not exceed the amount, or value of the goods, held or owing by the agent for or to the principal.

(2) The Commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a return showing details of any moneys or goods which may be held by that person from whom duty is due under this Act.

(3) Section 165 shall apply to an agent appointed under subsection (1) as though he were a duly authorized agent acting on behalf of the owner.

(4) An agent who is appointed under subsection (1) and who claims to be, or to have become unable to comply with the notice for any reason whatsoever shall, as soon as may be practicable, notify; the commissioner accordingly in writing stating the reasons for his inability, and the Commissioner may accept and cancel, amend or reject the notification as he may think fit.

(5) Notwithstanding subsection (4), an agent shall be presumed to be holding sufficient money for the payment of the duty specified in the notice unless his notification under subsection (4) is accepted or amended, and in any proceedings for the collection of that duty he

shall be stopped from asserting the lack of those moneys.

(6) Where an agent fails to remit any amount of duty specified in the notice addressed to him within thirty days of the date of service of ~h~ notice on him, or, of the date on which any moneys came into his hands for or become due by him to, his principal, whichever is the later and he has not complied with subsection (4) then, the provisions of this Act relating to the collection and recovery of duty shall apply as if it were duty due and payable by him from the date when such duty should have been paid to the Commissioner.

(7) An agent who has made payment of duty under this section shall for all purposes be deemed to have acted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of that payment against any proceedings civil or criminal and all process, judicial or extra judicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(6) A person who, in giving a notification under subsection (4), willfully makes any false or misleading statement, or willfully conceals any material fact, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of not more than three years or to both.

**166B** The Commissioner may, by notice in the Gazette, appoint an agent to perform such of his functions under this Act as he may specify in the notice, subject to such terms and conditions as may be agreed between the Commissioner and such agent.

#### **PART XIV--PREVENTION OF SMUGGLING AND EVASION**

Power to require vessels, etc., to bring to.

**167.** (1) The master of a vessel within Kenya shall bring his vessel to for boarding on being signalled so to do by a vessel in the service of the customs and flying the customs flag or the Kenya national flag.

(2) The master of an aircraft within or over Kenya shall land the aircraft on being signalled so to do by any person in the service of the customs or the Government.

(3) The master of an aircraft which has landed, or of a vessel bringing to for boarding, shall facilitate by all reasonable means the boarding of the aircraft or vessel by the proper officer, and shall cause the aircraft or vessel to remain stationary for such period as the proper officer may require.

(4) A master of an aircraft or vessel who contravenes this section shall

be guilty of an offence and liable-

(a) In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding three hundred thousand shillings; and the vessel in respect of which the offence has been committed shall be liable to forfeiture;

(b) In the case of the master of an aircraft, or of a vessel of two hundred and fifty tons register or more, to a fine of such amount as the court deems just; and the aircraft or vessel in respect of which the offence has been committed may be seized and detained until the fine is paid or security therefor given.

power to  
require vessel,  
etc., to depart.

**168.** (1) The master of an aircraft or vessel within or over Kenya shall on being required so to do by the proper officer, depart from Kenya within twelve hours of the requirement:

Provided that this subsection shall not apply in the case of an aircraft or vessel which is registered in Kenya.

(2) A master of an aircraft or vessel who contravenes subsection (1) shall, unless prevented from complying with that subsection by circumstances beyond his control, the proof whereof shall lie on the master, be guilty of an offence and liable--

(a) In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding one hundred thousand shillings; and the vessel in respect of which the offence has been committed shall be liable to forfeiture;

(b) In the case of the master of an aircraft, or of a vessel of two hundred and fifty tons register or more, to a fine of such amount as the court deems just; and the aircraft or vessel in respect of which the offence has been committed may be seized and detained until the fine is paid or security therefor given.

Power to  
patrol freely  
and moor  
vessels, etc.

**169.** (1) An officer while on duty may enter upon and patrol and pass freely along any premises, other than a dwelling-house or a building.

(2) An officer in charge of an aircraft, vessel or vehicle employed in the prevention of smuggling or evasion of the provisions of this Act, may take the aircraft, vessel or vehicle to such place as he may consider most convenient for that purpose, and may there keep the aircraft, vessel or vehicle for such time as he may consider necessary for that purpose.

No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

power to board vessel, etc., and search. 7 of 1988, s. 13.

**170.** (1) An officer may, in the course of his duty, stop, board and search an aircraft, vessel or vehicle within Kenya and may examine, lock up, seal, mark or otherwise secure any goods on the aircraft, vessel or vehicle, and for the purposes of the examination or security of any goods, the officer may require the goods to be unloaded or removed, at the expense of the master of the aircraft or vessel, or the person in charge of the vehicle.

(2) An officer acting under this section who is unable to obtain free access to any part of the aircraft, vessel or vehicle or to any container therein, may enter that part or open that container in such manner, if necessary by force, as he may think necessary.

(3) An officer boarding an aircraft or vessel under this section may remain thereon for such time as he may consider necessary and the master of the aircraft or vessel shall either provide the officer with proper and sufficient food and suitable bedding accommodation or, with the approval of the proper officer and subject to such conditions as he may impose, pay such sum as may be prescribed in lieu thereof; and a master who contravenes this subsection, or of any such conditions; shall be guilty of an offence and liable to a fine not exceeding sixty thousand shillings.

(4) A master of an aircraft or vessel, or the owner or a person in charge of a vehicle-

(a) Who refuses to stop or to permit the aircraft, vessel or vehicle to be searched in accordance with this section; or

(b) In which goods which have been locked up, sealed, marked or otherwise secured in accordance with this section are in any way interfered with except in accordance with the permission of the proper officer; or

(c) In which a lock, seal or mark placed on any place or goods in accordance with this section is in any way opened, broken or altered, shall be guilty of an offence.

(5) Where, on the search of an aircraft vessel or vehicle under this section, goods are found in relation to which an offence under this Act has been committed, then the master of the aircraft or vessel or the owner or the person in charge of the vehicle shall be guilty of an offence and liable to imprisonment for a term not exceeding three

years or to a fine not exceeding one million five hundred thousand shillings or to both; and the goods shall be liable to forfeiture;

(6) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

(7) Where, on an aircraft, vessel or vehicle being bearded under this section, goods are found therein and on the aircraft, vessel or vehicle being subsequently bearded, whether by the same or another officer, those goods or any part thereof are no longer therein, then, unless the master of the aircraft or vessel, or the person in charge of the vehicle accounts for the goods to the satisfaction of the proper officer, the master or person shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both.

**171.** A person entering or leaving Kenya shall answer questions which the proper officer may put to him with respect to his baggage and any article contained therein or carried with him.

**172.** (1) Subject to this section, an officer may, if he has reasonable grounds to believe that a person has in his possession, whether upon his person or in his baggage, uncustomed goods or excisable goods in relation to which an offence under this Act has been committed, search that person; and the officer may, for that purpose, use all reasonable force.

(2) A female shall not be searched except by a female.

(3) Where an officer informs a person that he proposes to search him, then that person shall, if he so requires, be taken forthwith before a magistrate, the Commissioner or any other superior officer, who may, if he sees no reasonable cause for the search, order that person not to be searched.

(4) Where, on the search of a person under this section, goods are found in his possession, whether upon his person or in his baggage, in relation to which an offence under this Act has been committed, then the goods shall be liable to forfeiture.

(5) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

Power of arrest. **173.** (1) An officer may, if he has reasonable grounds to believe that a person is committing, or has within the past year committed or been concerned in the commission of, an offence under this Act, arrest that person; and the officer may for that purpose use all reasonable force.

(2) A person arrested in accordance with this section shall forthwith be taken before a magistrate, or to a police station, to be dealt with according to law.

(3) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

(4) Without prejudice to the powers of a police officer to arrest any person for an offence under this Act which is recognizable to the police under any other law, for the purposes of this section the expression "officer" includes a police officer.

Power search premises. **174.** (1) A proper officer may in the course of his duty or if he has reasonable grounds to believe that there are on any premises uncustomed goods or documents relating to uncustomed goods, or plant utilized for the manufacture of excisable goods contrary to this Act, enter upon and search those premises by day or by night, and for that purpose the proper officer may use all reasonable force and may require the assistance of, and take with him, another officer or a police officer and such assistance shall be given.

(2) Where a proper officer enters upon any premises in accordance with this section then-

(a) He may require the owner or occupier of the premises to produce, either forthwith or at a time and place to be fixed by the proper officer, any book, document or thing which the owner or occupier is required to keep under the provisions of this Act or which relates to any imported or exported goods, or to any goods to be imported or exported by the owner or occupier;

(b) He may examine and take copies of any such book or document;

(c) He may, seize and detain any such book, document or thing if in his opinion it may afford evidence of the commission of an offence under this Act;

(d) He may require the owner or occupier to answer questions

relating to any such book, document or thing, or to any entry in the book or document;

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

(f) He may, at the risk and expense of the licensee, owner or occupier, open and examine any package or any goods or materials in the premises;

(g) He may take and retain without payment such reasonable samples of any goods or materials as he may think necessary for the performance of his duties.

(3) Where, on the search of premises under this section, uncustomed goods, or documents relating to uncustomed goods, are found, the proper officer may seize and carry away those goods or documents.

(4) Where, on the search of premises under this section, plant or excisable goods, or materials, are found in relation to which an offence under this Act has been committed, then the plant, goods and materials shall be liable to forfeiture.

(5) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section

Power to seal,  
etc., buildings  
etc.  
6 of 1994. s.  
9.

**175.** (1) An officer may, in the course of his duty, lock up, seal, mark or otherwise secure-

(a) Any building, room, place, receptacle or item of plant;

(b) Any excisable goods or materials in a factory;

(c) Aircraft, vessels, vehicles or containers,

(2) A person who, except by authority, opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening placed by an officer in accordance with the provisions of this section on any building, room, place, receptacle, item of plant, excisable goods, or materials, shall be guilty of an offence.

Search  
warrants.

**176.** (1) Without prejudice to any other power under this Act, where an officer declares on oath before a magistrate that he has reasonable grounds to believe that there are in any premises--

(a) uncustomed goods or documents relating to uncustomed goods; or

(b) Giant which has been utilized for, or materials used in the manufacture of excisable goods contrary to this Act, then the magistrate may by warrant under his hand authorize the officer to enter upon and search, with such force as may be necessary and by day or by night, the premises and to seize and carry away any uncustomed goods, plant or documents relating to uncustomed goods found therein.

(2) An officer in possession of a search warrant may require a police officer to assist him in the execution of the warrant and a police officer so required shall render assistance accordingly.

Power to require production of books, etc. 6 of 1981, s. 2.

**177.** (1) Where-

(a) Information has been given to the proper officer that goods have been, or are intended to be, smuggled, undervalued or dealt with contrary to this Act; or

(b) Any thing or goods have been seized under this Act, then the proper officer may require the owner of the goods or thing forthwith to produce all books and documents relating in any way thereto, or to any other goods imported, exported, carried coastwise, manufactured, purchased, sold or offered for sale by that owner within a period of five years immediately preceding the requirement.

(2) On production of the books or documents the proper officer may inspect and take copies of any entries therein; and the proper officer may seize and detain any such book or document if in his opinion it may afford evidence of the commission of an offence under this Act.

Power to call for aid

**178.** A person making a seizure or arrest in accordance with the provisions of this Act may call upon any other person to assist him, and assistance shall be rendered accordingly.

Offences Assembling to contravene provisions of Act.

**179.** A person who-

(a) Assembles with two or more persons for the purpose of contravening any of the provisions of this Act; or

(b) Having so assembled, contravenes any of the provisions of this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

Offences with violence, etc.

**180.** (1) A person who-

(a) Maliciously shoots at an aircraft, vessel or vehicle in the service of the customs;

(b) Maliciously shoots at, maims or wounds an officer while in the execution of his duty; or

(c) Commits with violence any of the offences referred to in subsection (4), shall be guilty of an offence and liable to imprisonment for a term not exceeding twenty years.

(2) A person who-

(a) While committing an offence under this Act is armed with a firearm or other offensive weapon; or

(b) While being so armed, is found with goods liable to forfeiture under this Act, shall be guilty of an offence and liable to

imprisonment for a term not exceeding ten years.

- (3) A person who-
- (a) While committing an offence under this Act is disguised in any way; or
  - (b) While being so disguised, is found with goods liable to forfeiture under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.
- (4) A person who-
- (a) Staves, breaks, destroys or throws overboard from an aircraft, vessel or vehicle any goods for the purpose of preventing the seizure thereof; or
  - (b) Rescues, staves, breaks, destroys or throws overboard from an aircraft, vessel or vehicle any goods for the purpose of preventing the securing of those goods after they have been seized; or
  - (c) Rescues a person arrested for any offence under this Act; or
  - (d) in any way obstructs an officer in the execution of his duty, shall be guilty of an offence.
- (5) For the purposes of this section "violence" means any criminal force or harm to a person, or any criminal mischief to property, or any threat or offer of that force, harm or mischief, or the carrying or use of any dangerous or offensive weapon so that terror is likely to be caused to any person, or conduct as is likely to cause in any person a reasonable apprehension of criminal force, harm or mischief, to him or to his property.

Attempts to commit offences. **181.** A person who attempts to commit an offence under this Act shall be guilty of an offence and liable to be punished as though he had actually committed the offence.

Offences to warn offender 10 of 1980, s. 2. **182.** (1) A person who, with intent to obstruct an officer in the execution of his duty, warns, or does any action for the purpose of warning, another person engaged in the commission of an offence under this Act, whether or not that other person is in a position to take advantage of the warning or act, shall be guilty of an offence and liable to imprisonment for a term not exceeding six years or to a fine not exceeding six hundred thousand shillings or to both.

(2) Where a person is charged with an offence under this section, the burden of proving that anything done by him was not done with that intent shall be upon that person.

(3) A person may prevent another person from giving any such warning and for that purpose may enter upon any land and shall not thereby be liable to legal proceedings

- Offence to assume character of officer.
- 183.** A person, not being an officer, who takes or assumes the name, designation, character or appearance of an officer for the purpose of-
- (a) Obtaining admission to an aircraft, vessel, vehicle, premises or place; or
  - (b) Doing or procuring to be done an act which he would not be entitled to do or procure to be done on his own authority: or
  - (c) Doing any unlawful act shall be guilty of an offence and liable to imprisonment for a term not exceeding three years in addition to any other punishment to which he may be liable for the commission of the unlawful act.
- 184.** A master of an aircraft or vessel, and a Master of vessel, and a person in charge of a vehicle, which is within Kenya and-
- (a) Which has a secret or disguised place adapted for of concealing goods, or a device adapted for smuggling goods; or
  - (b) Which has in it, or in any manner attached to it, or which is conveying, or has conveyed in any manner, goods imported, carried coastwise or intended for exportation contrary to this Act; or
  - (c) From or in which any part of the cargo of the aircraft, vessel or vehicle has been thrown overboard, broken, rescued, destroyed or staved in order to prevent seizure. Shall be guilty of an offence and liable-
    - (i) In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding three hundred thousand shillings; and any vessel and goods in respect of which the offence has been committed shall be liable to forfeiture;
    - (ii) In the case of the master of an aircraft, or of a vessel of two hundred and fifty tons register or more, to a fine of such amount as the court deems just; and the aircraft or vessel in respect of which the offence has been committed may be seized and detained until the fine is paid or security therefor given, and any goods in respect of which the offence has been committed shall be liable to forfeiture;
    - (iii) In the case of the person in charge of a vehicle, to a fine not exceeding one million five hundred thousand shillings; and the vehicle and goods in respect of which the offence has been committed shall be liable to forfeiture.
- Offence in respect of prohibited, restricted and uncustomed goods.
- 185.** (1) A person who--
- (a) Imports or carries coastwise--
    - (i) Prohibited goods, whether or not those goods are unloaded; or
    - (ii) Restricted goods contrary to any conditions regulating the

10 of 1980, s.  
2.

importation or carriage coastwise of those goods, whether or not those goods are unloaded;

Master of vessel, etc., used for smuggling or evasion guilty of offence.

(b) Unloads after importation or carriage coastwise--

(i) Prohibited goods; or

(ii) Restricted goods which have been imported or carried coastwise contrary to any condition regulating their importation or carriage coastwise;

(c) Exports, carries coastwise, or puts on board an aircraft, vessel or vehicle, or brings to a customs airport, customs area or place to be so put on board, for exportation or use as stores or carriage coastwise--

(i) Prohibited goods; or

(ii) Restricted goods contrary to any condition regulating the exportation or use as stores or carriage coastwise of those goods;

(d) Acquires, has in his possession, keeps or conceals, or procures to be kept or concealed, goods which he knows, or ought reasonably to have known to be-

(i) Prohibited goods; or

(ii) Restricted goods which have been imported or carried coastwise contrary to any condition regulating their importation or carriage coastwise; or

(iii) uncustomed goods,

Shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine equal to three times the amount of duty and any other taxes payable on the goods in respect of which the offence was committed subject to a maximum of one million five hundred thousand, or to both such fine and imprisonment.

(2) Any person who being the owner of any premises, allows any person to use such premises for storage or sale of such uncustomed goods shall be guilty of an offence and liable to a fine not exceeding one million shillings

Offence to import or export concealed goods.

**186.** A person who imports or exports goods--

(a) Which are concealed in any way; or

(b) Which are packed in a package (whether or not together with other goods) in a manner likely to deceive an officer; or

(c) Which are contained in a package of which the entry or application for shipment does not correspond with the goods, shall be guilty of an offence.

Offence to make or use false documents 10 of 1980, s. 2..

**187.** A person who, in any matter relating to the customs -:

- (a) Makes an entry which is false or incorrect in any particular;
- (b) Makes or causes to be made a declaration, certificate, application, return, estimate account or other document which is false or incorrect in any particular;
- (c) When required in accordance with this Act to answer any question put to him by an officer, refuses to answer the question or makes a false or incorrect statement in reply thereto;
- (d) Makes a false statement or false representation in order to obtain remission, rebate, drawback or refund of duty;
- (e) Obtains any drawback, rebate, remission or refund of duty which to his knowledge he is not entitled to obtain;
- (f) in any way is knowingly concerned in a fraudulent evasion of the payment of duty;
- (g) Except by authority moves, alters or in any way interferes with any goods subject to customs control;
- (h) Brings into Kenya or has in his possession, without lawful excuse, any blank or incomplete invoice, bill head or other similar document capable of being filled up and used as an invoice for imported goods; or
- (i) counterfeits or in any way falsifies or knowingly uses when counterfeited or in anyway falsified, any document required or issued by, or used for the purposes of, the customs,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both.

Offence to refuse to produce documents, etc.

**188.** A person who, when required in accordance with this Act-

- (a) to produce a book, document or other thing in his possession or under his control; or
- (b) to perform an act or make a return, refuses or fails to do so shall

be guilty of an offence.

Offence to use false measures.

**189.** A person who-

- (a) uses, keeps or provides false or unjust scales, weighing or measuring instruments, weights or measures; or
- (b) by any means prevents, or contrives to prevent, the proper officer from taking a just and true account of, or making proper examination of, any goods or materials, shall be guilty of an offence; and any such scales, instruments, weights, measures,

- goods and materials in respect of which the offence was committed shall be liable to forfeiture.
- Offence to interfere with customs properly
- 10 of 1980, s. 2.
- Offences in connexion with excisable goods.
- Uncustomed goods found to
- 190.** A person who cuts away, casts adrift, destroys, damages, defaces or in any way interferes with an aircraft, vessel, vehicle, buoy, anchor, chain, rope, mark or other thing used for the purposes of the customs shall be guilty of an offence and liable to a fine not exceeding one hundred twenty thousand shillings.
- 191.** (1) A person who-
- (a) conceals in or, without the consent of the proper officer, removes from a distillery any wort, wash, low wines, feints or spirits;
  - (b) knowingly buys or receives any wort, wash, low wines, feints or spirits so concealed or removed;
  - (c) knowingly buys or, without proper authority, receives or has in his possession, any excisable goods which have been manufactured contrary to the provisions of this Act, or which have been removed from the place where they ought to have been charged with duty before the duty payable thereon has been charged and either paid or secured;
  - (d) without proper authority has in his possession any low wines or feints;
  - (e) without proper authority has in his possession any wort or wash fit for distillation; or
- (a) having obtained any excisable goods in respect of which duty has been remitted for a particular purpose, fails to comply with any conditions imposed by the Commissioner concerning the use of those goods or uses those goods for a different purpose without the approval in writing of the proper officer shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both.
- (2) Any spirits and any still, vat, utensil, wort, wash or other materials for manufacturing spirits--
- (a) found in the possession of a person who commits an offence under subsection (1); or
  - (b) found on premises on which such an offence has been committed, shall be liable to forfeiture.
- (3) Notwithstanding any other provisions of this Act relating to goods seized as liable to forfeiture, an officer by whom a thing is seized as liable to forfeiture under subsection (2) may forthwith spill, break up or destroy that thing.
- 192.** A person who, on finding uncustomed goods on land or floating upon

be reported. or sunk in the sea, fails to report the discovery to the nearest officer shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture.

Goods offered on pretence of being smuggled. **193.** Where goods are offered for sale under the pretence that they are uncustomed goods, then those goods, whether or not they are in fact uncustomed goods, shall be liable to forfeiture.

Aiders, abettors, etc. **194.** A person who aids, abets, counsels or procures the commission of an offence under this Act or authorizes another person so to do shall be liable to be charged and, if convicted, punished as though he had actually committed the offence.

#### **PART XV: PENALTIES. FORFEITURES AND SEIZURES**

General penalty. **195.** (1) A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine not exceeding one million five hundred thousand shillings.

(2) Where, on conviction for an offence under this Act, a person becomes liable to a fine not exceeding a specified amount, then the court may impose a fine not exceeding three times the value of any goods in respect of which the offence was committed or the specified amount, whichever is the greater; and for the purpose of determining the value of those goods--

(a) the commissioner shall cause the goods to be appraised by the proper officer;

(b) the proper officer shall appraise the goods according to the rate and price

for which goods of the same kind but of the best quality upon which duties have been paid were sold at or about the time of the offence, or according to the rate and price for which goods of the same kind but of the best quality were sold in bond at or about the time of the offence with the duties thereon added to that rate or price in bond; and no regard shall be had to any damage or injury sustained by the goods;

(c) a certificate of the appraised value given under the hand of the Commissioner Shall be prima facie evidence of the value of those goods.

**196.** In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture--

- (a) prohibited goods;
- (b) restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;
- (c) uncustomed goods;
- (d) goods which are imported, exported or carried coastwise concealed in any manner, or packed in a package (whether with or without other goods) in a manner appearing to be intended to deceive an officer.
- (e) goods which are imported, exported or carried coastwise contained in a package of which the entry, application for shipment or application to unload does not correspond with the goods;
- (f) goods subject to customs control which are moved, altered or in any way interfered with, except with the authority of an officer;
- (g) goods in respect of which, in any matter relating to the customs, an entry, declaration, certificate, application or other document, answer, statement or representation, which is knowingly false or knowingly incorrect in any particular has been delivered, made or produced;
- (h) goods in respect of which drawback, rebate, remission or refund of duty has been unlawfully obtained.

Goods liable to forfeiture.  
Vessels, etc., liable to forfeiture.

**197.** (1) A vessel of less than two hundred and fifty tons register, and a vehicle, animal or other thing made use of in the importation, landing, removal, conveyance, carriage coastwise or exportation of goods or other things liable to forfeiture under this Act shall itself be liable to forfeiture.

(2) An aircraft, or a vessel of two hundred and fifty tons register or more made use of in the importation, landing, removal, conveyance, carriage coastwise or exportation of goods or other things liable to forfeiture under this Act shall not itself be liable to forfeiture but the master of the aircraft or vessel shall be guilty of an offence and liable to a fine of such amount as the court deems just; and the aircraft or vessel may be seized and detained until the fine is paid or security therefor given.

(3) Where an aircraft, vessel, vehicle, animal or other thing is liable to forfeiture under this Act, then the tackle, apparel, furniture and all other gear used in connection therewith shall also be liable to forfeiture therewith.

**198.** (1) Where goods are liable to forfeiture under this Act, then the

Provisions

relating to  
goods liable to  
forfeiture.

package in which the goods are, and all the contents of the package, shall also be liable to forfeiture therewith.

- (2) Where goods which are prohibited goods or restricted goods have been shipped for importation without knowledge by the shipper of the prohibition or restriction and before, in the opinion of the Commissioner, the expiration of a reasonable time for that information to be available at the port of shipment, then, notwithstanding this Act, those goods shall not on importation be liable to forfeiture but shall be re-exported, or otherwise disposed of, as the Commissioner may determine; and pending re-exportation or disposal the goods shall be subject to customs control.

Power to seize  
goods liable to  
forfeiture.

- 199.** (1) An officer or police officer may seize **an Power** to seize aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he has reasonable grounds to believe is liable to forfeiture; and any such aircraft, vessel, vehicle, goods, animal or other thing may be seized whether or not a prosecution for an offence under this Act which rendered it liable to forfeiture has been, or will be, taken.
- (2) An aircraft, vessel, vehicle, goods, animal or other thing seized and detained under this Act shall be taken to a customs warehouse or to such other place of security as the proper officer may consider appropriate.
- (3) The Commissioner may, at any time prior to the commencement of proceedings under this Act relating to an aircraft, vessel, vehicle, goods, animal or other thing which has been seized under this Act, release it and return it to the person from whom it was seized, if he is satisfied that it was not liable to seizure.
- (4) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

Procedure on  
seizure.

- 200.** (1) Where a thing has been seized under this Act, then, unless the thing was seized in the presence of the owner thereof, or, in the case of an aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons therefor to the owner thereof or, in the case of an aircraft or vessel, to the master thereof:

Provided that--

- (i) no notice of seizure shall be given where a person has, within the period of one month, been prosecuted for the offence by reason of which the thing has been seized, or the offence has been compounded under Part X VII, and if, after the notice has been given but before

- condemnation of the thing in accordance with this Act-
- (a) a prosecution is brought, then the thing shall be dealt with in accordance with section 201 as if no notice had been given;
  - (b) the offence is so compounded, then the thing shall be dealt with in accordance with Part X VII as if no notice had been given;
- (ii) where the thing has been seized in the presence of a person coming within the definition of owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice thereof to any other person coming within that definition;
  - (iii) a notice given to a person coming within the definition of owner shall be deemed to be notice to all other persons coming within that definition;
  - (iv) where no person coming within the definition of owner is known, then it shall not be necessary for the officer effecting the seizure to give notice thereof to any person.
- (2) Where goods which are of a perishable nature or are animals are seized, the Commissioner may direct that the goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of sale shall be retained and dealt with as if they were the goods.
- (3) Where anything liable to forfeiture under this Act has been seized, then--
- (a) if a person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 201;
  - (b) in any other case, the thing shall be detained until one month after the date of the seizure, or the date of a notice given under subsection (1), as the case may be; and if no claim is made therefor as provided in subsection (4) within the period of one month, the thing shall thereupon be deemed to be condemned.
- (4) Where anything liable to forfeiture under this Act has been seized, then, subject to proviso (i) to subsection (1) and to subsection (3) (a), the owner thereof may, within one month of the date of the seizure or the date of a notice given under subsection (1), as the case may be, by notice in writing to the

Commissioner claim the thing.

- (5) Where a notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner to be dealt with in accordance with this Act:

Provided that the Commissioner may permit the thing to be delivered to the person making the claim (hereinafter in this Part referred to as the claimant) subject to the claimant giving security for the payment of the value thereof, as determined by the Commissioner, in the event of its condemnation.

Effect of conviction, etc., on things liable to forfeiture,

- 201.** (1) Where a person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of that offence, the conviction of that person of that offence shall, without further order, have effect as the condemnation of that thing.
- (2) Where a person is prosecuted for an offence under this Act and anything is liable to forfeiture by reason of the commission of that offence, then, on the acquittal of that person, the court may order that thing either--
- (a) to be released to the person from whom it was seized or to the owner thereof; or
  - (b) to be condemned.

Procedure after notice of claim. 10 of 1990, s. 8

- 202.** (1) Where a notice of claim has been given to the Commissioner in accordance with section 200 (4), then the Commissioner may, within a period of two months from the receipt of the claim, either--
- (a) by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of the thing within two months of the date of the notice; or
  - (b) himself institute proceedings for the condemnation of the thing:

Provided that if a person is prosecuted for an offence by reason of which the thing had been seized and the case is withdrawn for whatever reason, the two month period shall commence from the date of such withdrawal.

- (2) Where the Commissioner fails within a period of two months either to require the claimant to institute proceedings, or himself to institute proceedings, in accordance with subsection (1), then the thing shall be released to the claimant:

Provided that if the thing is prohibited goods or restricted goods which have been imported, carried coastwise, or attempted to be exported, in contravention of any regulations relating thereto, it shall not be released to the claimant and shall become condemned.

- (3) Where the Commissioner has, in accordance with subsection (1) required the claimant to institute proceedings within a period of two

months and the claimant has failed to do so, then on the expiration of that period the thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of as the Commissioner may direct,

- (4) Where proceedings have been instituted in accordance with this section, then--
- (a) if the court is satisfied that the thing was liable to forfeiture under this Act, it shall be condemned;
  - (b) if the court is not so satisfied, the thing shall be released to the claimant:

Provided that the court shall not so release the thing to the claimant unless it is satisfied that the claimant is the owner thereof or, by reason of an interest therein, is entitled to the possession thereof; and if the court is not so satisfied, the thing shall be condemned as if no claim thereto had been made.

Provisions relating to condemnation. 7 of 1988, s. 14. 6 of 1981, s. 2,

**203.** (1) Where anything has been seized under this Act as being liable to forfeiture, then the condemnation of the thing shall in no way be affected by the fact that an owner of the thing was in no way concerned with the act which rendered it liable to forfeiture.

- (2) Where anything is condemned under this Act, then--
- (a) subject to section 214, the thing shall be forfeited and may be sold, destroyed or otherwise disposed of as the Commissioner may think fit;
  - (b) condemnation of the things shall have effect as from the date when the liability to forfeiture arose;
  - (c) condemnation shall, subject to any appeal in proceedings which resulted in condemnation, be final and, save as provided in section 204, no application or proceedings for restoration or in detinue by any person shall lie.

- (3) Where goods have been condemned and are in the possession of some authority other than the customs they shall be returned to the customs for disposal under subsection (2).

Restoration of seizures. 7 of 1988, s. 15.

**204.** (1) Where anything has been seized under this Act, the Minister may, on application by the person from whom the thing was seized, whether or not the thing has been condemned, direct that it be released to the applicant upon such conditions as the minister may think fit.

- (2) An application under subsection (1) shall be in writing and shall be forwarded to the Minister through the Commissioner

## PART XVI--LEGAL PROCEEDINGS

Proceeding  
triable in  
subordinate  
court of first  
class.

Where any such court hears and determines the prosecution it shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on a person convicted of the offence.

- (2) Without prejudice to the powers of any other court of competent jurisdiction, proceedings under Part XV relating to a claim to anything which has been seized under this Act, and a claim to any duties, rents, charges, expenses or other sums payable under this Act, may be heard and determined, without limit of amount, in civil proceedings before a subordinate court of the first class.

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- (3) Save where otherwise expressly provided, a person brought before a court for an offence under this Act shall be dealt with in accordance with the Criminal Procedure Code.

Actions by or  
against the  
Commissioner.

**206.** (1) Where under this Act proceedings may be brought by or against the Commissioner, then the Commissioner may sue or be sued in the name of the Commissioner of Customs and Excise and may for all purposes be described by that name; and, notwithstanding that an action may lie in tort, the Commissioner shall be responsible for the acts and defaults of an officer as if the officer were his servant or agent:

Provided that nothing herein contained shall confer a right of action against the Commissioner in his representative capacity, whether in contract or in tort, unless such right of action is specifically given in any other provision in this Act.

- (2) Where under this Act proceedings are brought by or against the Commissioner in his representative capacity, costs may be awarded to or against the Commissioner.
- (3) Where under this Act proceedings are brought by or against the Commissioner in his representative capacity and-
- (a) any sums or costs are recovered by the Commissioner, then those sums or costs shall be credited to the customs and excise revenue:
  - (b) any damages or costs are ordered to be paid by the Commissioner, then those damages or costs shall be paid out of the monies appropriated for the administration of the customs and the Commissioner shall not be personally liable therefor.

Limitation of

**207.** Proceedings for an offence under this Act may be commenced, and

proceedings	anything liable to forfeiture under this Act may be seized, within five years of the date of the offence.
Provisions relating to proof, etc., in proceedings. 10, of 1987, s. 6 5 of 1989, s. 5,	<p><b>208.</b> In proceedings under this Act--</p> <p>(a) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;</p> <p>(b) the onus of proving the place of origin of goods, or the payment of the proper duties, or the lawful importation, landing, removal, conveyance, exportation or carriage coastwise of goods, or the place of manufacture of excisable goods, or that spirits in respect of which duty has been remitted for a particular purpose have been used for that purpose, or the payment of the proper duties, or the lawful manufacture of excisable goods, or that any materials or plant have been unlawfully seized, shall be on the person prosecuted or claiming anything seized under this Act;</p> <p>(c) the averment by the Commissioner--</p> <p>(i) that a person is or was an officer or is or was employed in the prevention of smuggling, or that an act was performed by an officer in the execution of his duty;</p> <p>(ii) that any goods were staved, broken, destroyed, rescued or thrown overboard, or were so staved, broken, destroyed, rescued or thrown overboard for the purpose of preventing the seizure thereof or the securing thereof after seizure;</p> <p>(iii) that any act was done within the limits of a port or at, in or over any part of Kenya:</p> <p>(iv) that the Commissioner, or an officer, is or is not satisfied as to any matter as to which he is required to be satisfied under this Act:</p> <p>(v) that the Commissioner has directed or requested proceedings under this Act to be instituted, shall be prima facie evidence of that fact;</p> <p>(d) a certificate purporting to be signed by or on behalf of the Government Analyst or the Government Chemist shall be receivable in evidence and shall be prima facie evidence of the matters recorded therein;</p>

- (e) the production of a document purporting to be signed or issued by the commissioner or any person in the service of the Government shall be prima facie evidence that the document was so signed or issued;
- (f) a copy certified under the hand of the Commissioner, of an entry in a book or document required to be kept for the purposes of this Act shall be receivable in evidence and shall be prima facie evidence of the entry and of the matters recorded therein;
- (g) any information, communication, certificate, official report or other document purporting to originate from or to be certified under the hand and seal or stamp of office of a principal officer of customs and excise or of any other competent authority in a foreign country and produced by the Commissioner shall be receivable in evidence and shall be prima facie evidence of the matters communicated or recorded therein;
- (h) a certificate or a copy of a document or publication purporting to be signed or issued by or under the authority of the Customs Co-operation Council (established by an international convention at Brussels on 15th December, 1950) and produced by the Commissioner shall be receivable in evidence and shall be prima facie evidence of the matters contained therein;
- (i) any information, communication or certificate or a copy of a document purporting to be signed or issued by or under the authority of any institution, organisation or firm recognized and authorized by the Government under any agreement and produced by the commissioner shall be receivable in evidence and shall be prima facie evidence of the matters communicated or contained therein;
- (j) an officer shall be a competent witness notwithstanding that he is entitled to a reward;
- (k) the fact that security has been given by bond or otherwise for the payment of duty or for the compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are brought shall

not be a defence.

Provisions relating to penalties for offences. 7 of 1988, s 16.

- 209.** (1) Where any court imposes on a person a fine for an offence under this Act in relation to which an alternative of imprisonment is not specified, then the court may order that person, in default of payment of the fine, to be imprisoned for a term not exceeding--
- (a) twelve months, where the fine imposed does not exceed ten thousand shillings;
  - (b) three years, where the fine imposed exceeds ten thousand shillings.
- (2) Where a person is convicted of an offence under this Act involving intent to defraud, then the maximum fine which may be imposed on that person shall be double that otherwise provided under this Act.
- (3) Where a person is convicted of an offence under this Act and is liable to a fine of twenty thousand shillings or more and that person has previously been convicted of an offence under this Act or has previously been ordered to pay a sum of money under Part XVII and that order has been enforced by a court, then the court before which the person is so convicted may order that person to be imprisoned for a term not exceeding three years, or to pay the fine to which he is so liable or to be both so imprisoned and fined.
- (4) Where an offence under this Act is committed by a body corporate and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or similar officer of the body corporate, or a person purporting to act in any such capacity, then he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Place of trial.

- 210.** A person charged with an offence under this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if the offence had been committed in that place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place:
- Provided that nothing herein contained shall preclude the prosecution, trial and punishment of that person in a place in which, but for the provisions of this section, that person might have been prosecuted, tried and punished.

Protection of witnesses

- 211.** (1) No witness on behalf of the Government or of the Commissioner in proceedings under this Act shall be compelled to disclose the fact

that he received information relating to a customs matter, or the nature of that information, or the name of the person who gave that information.

(2) No officer appearing as a witness in any proceedings shall be compelled to produce any confidential reports made or received by him in his official capacity or any confidential information received by him in that capacity.

Reasonable grounds a defence in any action against officer.

**212.** (1) Where any proceedings, whether by way of prosecution or otherwise, are taken under this Act, and -

(a) the proceedings result in a determination in favour of a person prosecuted, or in favour of an owner claiming anything which has been seized; and

(b) the proceedings arise out of an act done, whether by way of seizure or otherwise by an officer in the execution or intended execution of his duty under this Act; and

(c) the court before which the proceedings are determined finds that there were reasonable grounds for the act,

then the court shall, on request made by or on behalf of the officer, so certify on the record; and a certified copy of that finding shall, on the request of the officer, be delivered to him and shall be receivable in evidence in any proceedings in proof of that finding.

(2) No officer shall be liable to any action or other proceedings on account of an act in respect of which a court has, under subsection (1), found that there were reasonable grounds for the act.

(3) Where proceedings are brought against an officer on account of an act done, whether by way of seizure or otherwise in the execution or intended execution of his duty under this Act and judgment is given against the officer, then, notwithstanding that in proceedings referred to in subsection (1), a court has not found that there were reasonable grounds for the act, if the court before which the proceedings are heard is satisfied that there were reasonable grounds for the act, the plaintiff shall be entitled to recover anything seized, or the value thereof, but shall not otherwise be entitled to damages and no costs shall be awarded to either party.

Power of officer to prosecute.

**213.** Any officer may appear and prosecute in a prosecution before a subordinate court for an offence under this Act.

#### **PART X VII--SETTLEMENT OF CASES BY THE COMMISSIONER**

Power of the commissioner to compound

**214.** (1) The Commissioner may, where he is satisfied Commissioner that a person has committed an offence under this Act in respect of which

offence by  
agreement.  
10 of 1980, s.  
2.

a penalty of a fine is provided, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted for the offence, as he may think fit; and he may order anything liable to forfeiture in connection therewith to be condemned:

Provided that the Commissioner shall not exercise his powers under this section unless the person in writing admits that he has committed the offence and requests the Commissioner to deal with the offence under this section.

- (2) Where the Commissioner makes an order under this section--
- (a) the order shall be put into writing and shall have attached to it the request of the person to the Commissioner to deal with the matter; and
  - (b) the order shall specify the offence which the person committed and the penalty imposed by the Commissioner; and (c) a copy of the order shall be given to the person if he so requests; and (d) the person shall not be liable to further prosecution in respect of the offence save with the express consent in writing thereto of the Attorney- General; and, unless that consent has been given, if a prosecution is brought it shall be a good defence for that person to prove that the offence with which he is charged has been compounded under this section; and
  - (e) subject to paragraph (d), the order shall be final and shall not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court.

#### PART X VIII--MISCELLANEOUS

Attendance of  
master before  
Commissioner.

- 215.** Where under the provisions of this Act the master or agent of an aircraft or vessel is required to answer questions put to him by the Commissioner or an officer, and the aircraft or vessel has not left its final position, anchorage or berth preparatory to leaving Kenya, then the Commissioner, or officer, may require the master to attend before him at the office of the Commissioner, or of the officer, as the case may be, for the purpose of answering the questions:

Provided that the master may, with the consent of the Commissioner or officer, depute a senior officer of the aircraft or vessel to attend at the office for that purpose; and in that case any reply made to a

question put to the senior officer by the Commissioner or officer shall, for the purposes of this Act, be deemed to be a reply made by the master.

Provisions relating to prescribed forms.

**216.** (1) Where the form of an entry, bond, return, account or other document required or authorized for the purposes of this Act has been prescribed, then all entries, bonds, returns, accounts or other documents shall be in the prescribed form and shall contain all the prescribed particulars.

(2) Where a prescribed form contains, by way of note or otherwise, a clear direction or indication of a requirement as to -

- (a) the colour or size of the form;
- (b) the number of copies of the form to be tendered (and the word "in duplicate" or similar words shall be sufficient indication of the number required);
- (c) the nature or form of the information to be furnished;
- (d) any action to be taken by the person concerned, or his agent, in the transaction in which the form is used;
- (e) the receipts to be signed by any person in proof of the fact that the goods described in the form have been received for carriage or otherwise, then the requirements so indicated shall be deemed to have been prescribed.

(3) The proper officer may require copies of a, prescribed form in addition to the numbers indicated on that form.

Provisions relating to all documents.

**217.** (1) Where a document required or authorized for the purposes of this Act contains any words not in the English language, then the person producing or using the document may be required to produce therewith a correct English translation of those words.

(2) Where a person is required to submit a form for the purposes of this Act, then the proper officer may require that person to submit as many copies thereof as he may think necessary.

(3) Where the proper officer requires an invoice to be produced for goods which have been imported, exported, carried coastwise or entered in transit or for transshipment, he may require the invoice to be submitted in original and duplicate and he may retain both.

(4) A person who fails to comply with a requirement under this section shall be guilty of an offence.

Production of documents. 8 of 1991, s. 30.

**218.** (1) The proper officer may, within five years of the date of importation or exportation, carriage coastwise, manufacture or delivery of any goods, require the owner thereof--

6 of 1994, s.  
10

- (a) to produce all books and documents relating in any way to those goods; and
  - (b) to answer any questions in relation thereto; and
  - (c) to make such declaration with respect to the weight number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of those goods, as the proper officer may think fit.
- (2) The proper officer may require any person who imports, exports or manufactures any goods similar to the goods to which subsection (1) applies but who is not the owner thereof-
- (a) to produce uh books and documents relating in anyway to his goods; and
  - (b) to furnish any information or particulars in relation thereto; and
  - (c) to make such declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of his goods previously imported, or intended to be imported by him as the proper officer may think fit.
- (3) The proper officer may require a person concerned in the exportation of goods to produce, within such time as the proper officer may consider reasonable, a certificate from the customs authorities at the port of discharge of the due discharge thereat of those goods according to the export entry.
- (4) Where a person fails to comply with a requirement made by the proper officer under this section, then the proper officer may refuse entry or delivery, or prevent exportation of the goods, or may allow entry, delivery or exportation upon the deposit of such sum, pending the production of the books and documents, as he may think fit; and a deposit so made shall be forfeited and paid into the customs and excise revenue if the documents are not produced within three months, or such further time as the proper officer may permit of the date, of the deposit.
- (5) Where a requirement made by the proper officer under this section relates to goods which have already been delivered or exported and the owner fails to comply with that requirement, then the proper officer may refuse to allow the owner to deliver or export any other goods.
- (6) The proper officer may retain any document produced by any owner under the provisions of this section but the owner shall be entitled to a copy thereof certified under the hand of the Commissioner; and the

certified copy shall be receivable in evidence in all courts and shall have equal validity with the original.

(7) A person who fails to comply with any requirement made under this section shall be guilty of an offence,

Power to require information from importers concerning dumping.

**219.** (1) The Commissioner may require the importer of goods regarded as having been dumped to state such facts concerning the goods and their history as the Commissioner may think necessary to determine whether the goods are goods originating in a country specified in an order or are goods exported from any country, and to furnish him in such form as he may require with proof of any statements so made; and if proof is not furnished to his satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Act to have originated in or, as the case may be, to have been exported from, such country as he may determine.

(2) Where the question whether any and if so what dumping duty is chargeable on the goods depends on other matters besides the country in which the goods originated or from which they were exported, the Commissioner may also require the importer to state such facts as the Commissioner may think necessary to determine that question, and with regard to those other matters to furnish him in such form as he may require with proof of any statements so made; and if proof is not furnished to his satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty imposed by an order to be such as he may determine.

Revisions relating to declarations and signatures.

**220.** (1) Where under this Act a declaration is required or authorized to be made, then the declaration may be made before a magistrate, notary public or commissioner for oaths, or before an officer authorized by the Commissioner for that purpose.

(2) Where under this Act a document is required or authorized to be signed in the presence of the Commissioner or of a particular officer, then, if the document is signed in the presence of a witness who is approved by, and whose signature is known to, the Commissioner or the particular officer, the document shall be deemed for the purpose of this Act to have been signed in the presence of the Commissioner or the particular officer.

Receipts for payment on entry.

**221.** Where a person requires a receipt for money paid and brought to account in respect of an entry then that person shall furnish the proper officer with an additional copy, marked as such, of the entry and the additional copy duly signed by the proper officer and acknowledging receipt of the money shall be given to that person and shall constitute the receipt for the payment.

- service of notices, etc.
- 222.** (1) Where under this Act a notice or other document is required or authorized to be served on, or given or delivered to, the Commissioner or any other officer, then the notice or other document may be so served, given or delivered--
- (a) by delivering it personally to the Commissioner or other officer; or
  - (b) by leaving it at the office of the Commissioner or other officer; or
  - (c) by sending it by post to the Commissioner or other officer.
- (2) Where under this Act a notice or other document is required or authorized to be served on, or given or delivered to a person by the Commissioner or any other officer, then such notice or other document may be so served, given or delivered--
- (a) by delivering it personally to that person; or
  - (b) by leaving it at the usual or last known place of address of that person; or
  - (c) by Sending it by post addressed to that person at his usual or last known place of address.
- Provisions relating to loading, etc , of goods.
- 223.** Where under this Act goods are required or authorized to be-
- (a) loaded, unloaded or removed to any place for security, examination, weighing, sorting or any other purpose prior to delivery or, in the case of goods for export, to exportation, then all such operations shall be performed by or at the expense of the owner of the goods;
  - (b) unpacked, sorted, piled or otherwise prepared for examination, then all such operations shall be performed by and at the expense of the owner of the goods and in such manner as the proper officer may require so as to enable him to examine and take account of the goods.
- Proper officer may take or allow samples, to taken.
- 224.** (1) The proper officer may at any time take samples of goods subject to customs control for such purposes as the Commissioner may think necessary; and any such samples shall be disposed of and accounted for in such manner as the Commissioner may direct.
- (2) The proper officer may, subject to such conditions as he may impose, permit the owner of any goods subject to customs control to take samples of those goods without payment of the duty thereon at the times the samples are taken.
- Recovery of excise duty by distress.  
8 of 1983, s. 5.
- 225.** (1) Where duty remains unpaid by a person after the time when, in accordance with the provisions of this Act, it is required to be paid, then the Commissioner may authorize distress to be levied--

- (a) upon the goods, chattels and effects of the person who should have paid the duty wherever those goods, chattels and effects may be found; and
  - (b) upon the plant of any factory and upon any vats, vehicles, animals or other articles used in the manufacture, sale or distribution of excisable or other goods by that person and found on any premises in the use or possession of that person or of any person on his behalf or in trust for him.
- (2) The warrant of distress shall be in the form set out in the Sixth Schedule and the warrant shall be authority to distrain for the amount of the duty specified therein; and for the purpose of levying distress the person authorized under the warrant may, if necessary, break open any building or place in the daytime and may call to his assistance a police officer and the police officer shall render assistance accordingly.
- (3) Where anything has been distrained upon under a warrant, then it shall be kept at the cost of the owner thereof for a period of fourteen days or until the amount due in respect of duty and of the costs and charges of, and incidental to the distress are paid, whichever is the sooner; and if at the end of the period of fourteen days the duty, costs and charges are not paid in full then the thing may be sold.
- (4) Where anything is sold in accordance with this section, then the proceeds of sale shall be applied in discharge of-
- (a) the duties; and
  - (b) the costs and charges of, and incidental to, the levying of distress and the sale, and the balance, if any, shall be paid to the owner of the thing if he makes application therefor within twelve months of the date of the sale.

Penalty for late  
payment.  
14 of 1982, s.  
8.  
8 of 1991, s.  
32.  
13 of 1995, s.  
49.

- 225A.** (1) Subject to sections 20 (2) and 158 where an amount of duty or other sum of money which is due under this Act remains unpaid after the date upon which it is payable, a penalty of two per cent per month or part thereof, of the unpaid amount shall forthwith be due and payable.
- (2) Subject to subsection (3), a penalty imposed under this section shall be recoverable as though it were duty.
- (3) A penalty imposed under this section in respect of non-payment of a sum of money payable pursuant to an order made under section 214 shall be recoverable as though it were part of that order.

security on  
property for

- 225B.** (1) Where a person, being the owner of land or buildings situated in

unpaid duty,  
etc.  
14 of 1982, s.  
8.

Kenya, fails to pay any duty or other sum of money due and payable under this Act, the commissioner may by notice in writing inform that person of his intention to apply to the Registrar of Lands for the land or buildings to be the subject of security for the duty or other sum of an amount specified in the notice.

- (2) If a person on whom a notice has been served under this section fails to pay the whole of the amount specified in the notice within thirty days of the date of service thereof, the Commissioner may by notice in writing direct the Registrar of Lands that the land or buildings, to the extent of the interest of that person therein, be the subject of security for duty or other sum of a specified amount, and the Registrar shall, without fee, register the direction as if it were a mortgage over or charge on the land or buildings and thereupon the registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage or charge to secure the amount payable.
- (3) The Commissioner shall, upon the payment of the whole of the amount secured under subsection (2), by notice in writing to the Registrar of Lands, cancel the direction made under that subsection and the Registrar shall, without fee, record the cancellation.

Rewards.  
13 of 1979, s.  
2.

**226.** The Commissioner may award to any officer or person--

- (a) who has arrested or has assisted in the arrest of any other person under this Act such reward, not exceeding twenty thousand shillings, as he may think fit on the conviction of that other person;
- (b) who has seized goods or by whose aid goods are seized under this Act such reward, not exceeding the value of the goods seized or twenty thousand shillings, whichever is the less, as he may think fit;
- (c) by whose aid a conviction is obtained in any prosecution under this Act such reward not exceeding twenty thousand shillings as he may think fit;
- (d) by whose aid an offence is compounded in accordance with Part X VII such reward not exceeding twenty thousand shillings as he may think fit.

Auctioneers  
legislation not  
to apply to  
sales.

**227.** Where goods are sold under this Act, then the provisions of any other legislation relating to auctioneers shall not apply to the sale.

Licensing of  
aircraft,  
vessels and  
vehicles

**228.** (1) The Commissioner may require an aircraft, vessel or vehicle intended to be used for the conveyance of goods subject to customs control to be licensed by him and in that case application for a

conveying  
goods subject  
to customs  
control.  
6 of 1994, s.  
11.

licence shall be made in such manner, and upon payment of such fees, as may be prescribed.

(2) A person who uses an unlicensed aircraft, vessel or vehicle for the conveyance of goods subject to the provisions of subsection (I) without the written permission of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

Application of  
Act to  
importation,  
etc., overland.

**229.** The provisions of this Act in relation to the importation or exportation of goods, or to the arrival or departure of persons, by aircraft or vessels arriving from or proceeding to a foreign port or place shall apply, subject to any necessary adaptations or modifications, in the same manner to the importation or exportation of goods or to the arrival or departure of persons, overland or by inland waterways.

Provisions  
relating to  
commissioned  
vessels and  
aircraft.

**230.** Where an aircraft or vessel under commission Provisions from a foreign state arrives in Kenya having on board goods other than stores for use in that aircraft or vessel-

(a) the aircraft or vessel may be bearded and searched by the proper officer in the same manner as any other aircraft or vessel and the proper officer may cause any such goods to be taken ashore and placed in a customs warehouse;

(b) the master of the aircraft or vessel shall--

(i) deliver an account in writing of the goods and of the quantity, marks and names of the shippers and consignees thereof;

(ii) answer all questions put to him by the proper officer in relation to the goods.

Excise  
licensee to  
furnish annual  
audit  
certificate.

**231.** The Commissioner may require an excise licensee to submit annually an audit certificate, signed by a qualified accountant not in the employment of the licensee, in relation to the books and records required to be kept by the licensee under the provisions of this Act.

Application of  
air legislation.

**232.** Where any legislation relating to air navigation in Kenya contains a provision contrary to the provisions of this Act, then the provision contained in that legislation shall have effect to the exclusion of the corresponding provision contained in this Act.

Power of  
commissioner  
in special  
cases.

**233.** Notwithstanding anything contained in this Act, the Commissioner may, in order to meet the exigencies of any special case-

(a) permit goods to be loaded on to, or unloaded and removed from an aircraft, vessel or vehicle on such days, at such times, at such places, and under such conditions, as he may either generally or in any particular case direct;

(b) permit the entry of goods, and the report or clearance of

an aircraft, vessel or vehicle, in such form and manner, and by such person, as he may either generally or in particular cases direct;

(c) dispense, wholly or in part, with any requirement imposed on an excise licensee under this Act.

Regulations.  
8 of 1991, s.  
27.

**234.** (1) The Minister may make regulations generally for giving effect to the provisions of this Act and for the conduct of any business relating to the customs and, without prejudice to the generality of the foregoing, with respect to-

(a) the application of this Act to postal articles and the powers of officers in the service of the Post Office in relation to goods imported or exported by post;

(b) the conditions upon which goods may pass in transit;

(c) the fee to be paid for any licence issued under this Act;

(d) the rents and other charges to be paid in respect of goods warehoused or deposited in a customs warehouse, Government warehouse, transit shed or customs area;

(e) the total or partial exemption from import duty for a limited period of a vehicle, or article of an everyday kind in actual use, brought into Kenya by a person making only a temporary stay therein;

(f) the transmission by post without prepayment of postage of any return or declaration required or authorized under the provisions of this Act;

(g) the information to be supplied by the importer or any other person concerned with the importation of goods for the purpose of the proper valuation thereof, and the production of books of accounts or other documents relating to the purchase, importation, or sale of the goods;

(h) the regulation and control of the conduct of business and operations of refineries;

(i) the weights, quantities and sizes in which excisable goods may be made up or packed for sale;

(j) the returns to be made by a licensee for the purposes of this Act;

(k) for securing and collecting duty;

(l) regulating the manufacture of spirits;

(m) prescribing the maximum and minimum strengths of any wort, wash or spirits;

(n) regulating the receipt, storage, warehousing, removal and delivery of spirits prior to the payment of duty thereon, or

- in respect of which duty has been remitted;
- (o) regulating operations in a distiller's or rectifier's warehouse;
  - (p) regulating the denaturing of spirits.
  - (q) the dumping of goods and subsidisation of goods exported to Kenya;
  - (r) the implementation of Kenya's obligations under any international treaty or agreement relating to the provisions of Act.
- (2) Regulations made under subsection (1) may provide that any person contravening any of the provisions thereof shall be guilty of an offence and liable to a fine not exceeding one million five hundred thousand shillings or three times the value of the goods involved, whichever be higher, or to imprisonment for a term not exceeding three years, or to both.
- 235.** (1) Where security was given for the doing of any act or for the protection of revenue or an obligation to pay duty, whether by bond or otherwise, in Kenya under the East African Customs and Transfer Tax Management Act or the East African Excise Management Act, it shall have effect as if it had been given, undertaken or incurred under this Act, and may be enforced with respect to a default occurring at any time after the date it was given, notwithstanding that that date was prior to the commencement of this Act.
- (2) Where duty was due to be paid or refunded in Kenya under the East African Customs and Transfer Tax Management Act, the East African Excise Management Act or any of the Acts repealed by this Act\* whether before or after the commencement of this Act, and was not so paid or refunded, it shall be paid or refunded as though it were a sum due under this Act.
- (3) Where goods in Kenya were seized or were liable to seizure, or where proceedings were instituted in Kenya by or against the Commissioner-General of Customs and Excise under the East African Customs and Transfer Tax Management Act or the East African Excise Management Act for the release or forfeiture of seized goods or for the payment or refund of duty or any other sum, then the seizure or liability to seizure, or the proceedings, shall be deemed to have taken place, arisen or been commenced, as the case may be, under the corresponding provisions of this Act.