

PART XVII

OFFENCES, PENALTIES, FORFEITURES AND SEIZURES

193. A person who conspires with another person or persons to contravene any of the provisions of this Act commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Conspiring
to contravene provisions
of this Act

194. (1) A person who—

Offences with violence,
etc.

- (a) maliciously shoots at any aircraft, vessel or vehicle in the service of the Customs; or
- (b) maliciously shoots at, maims or wounds any officer while in the execution of his or her duty; or
- (c) commits with violence any of the offences referred to in subsection (4), commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years.

(2) A person who—

- (a) while committing an offence under this Act is armed with any firearm or other offensive weapon; or
- (b) while being so armed, is found with any goods liable to forfeiture under this Act, commits an offence and shall be liable on conviction 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 any goods liable to forfeiture under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(4) A person who—

- (a) staves, breaks, destroys or throws overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the seizure of the goods; or
- (b) rescues, staves, breaks, destroys, or throws overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the securing of such goods after they have been seized; or
- (c) rescues any person arrested for any offence under the Act; or

(d) in any way obstructs any officer in the execution of his or her duty, commits an offence.

(5) For the purposes of this section, the expression “violence” means any criminal force or harm to any person, or any criminal mischief to any property, or any threat or offer of such force, harm or mischief, or the carrying or use of any dangerous or offensive weapon in such manner that terror is likely to be caused to any person, or such conduct as is likely to cause in any person a reasonable apprehension of criminal force, harm or mischief, to them or to their property.

Removing or defacing customs seals.

195. A person who wilfully removes any customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in circumstances contrary to the regulations or who wilfully alters, defaces, obliterates or imitates, any mark placed by an officer on any package commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand five hundred dollars or to both.

Inducing another to commit offence.

196. A person who by any means procures or induces or authorises another person to procure or induce, any other person to commit or assist in the commission of any offence under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

Offence to warn offender.

197. (1) A person who, with intent to obstruct any officer in the execution of his or her duty, warns, or does any act for the purpose of warning, any other person engaged in the commission of an offence under this Act, whether or not such other person is in a position to take advantage of such warning or act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand five hundred dollars or to both.

(2) Where any person is charged with an offence under this section, the burden of proving that anything done by him or her was not done with intent shall lie upon that person.

(3) A person may prevent any other person from giving any warning and for that purpose may enter upon any land and shall not be liable to any legal proceedings.

Offence to assume character of officer.

198. 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 any aircraft, vessel, vehicle, premises or place; or
- (b) doing or procuring to be done any act which he or she would not be entitled to do or procures to be done on his or her own authority; or

(c) doing any unlawful act,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years in addition to any other punishment to which he or she may be liable for the commission of any unlawful act.

199. A master of any aircraft or vessel, and any person in charge of a vehicle, which is within a Partner State and—

Master of vessel, etc., used for smuggling commits an offence.

- (a) which has any secret or disguised place adapted for concealing goods, or any 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, any goods imported, or carried coastwise, or intended for exportation, contrary to this Act; or
- (c) from or in which any part of the cargo of such aircraft, vessel or vehicle has been thrown overboard, destroyed or staved, in order to prevent seizure,

commits an offence and shall be 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 seven thousand dollars and any vessel and goods in respect of which such offence has been committed shall be liable to forfeiture;
- (ii) in the case of the master of an aircraft or vessel of two hundred and fifty tons register or more, to a fine not exceeding ten thousand dollars; and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security given, and any goods in respect of which such 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 five thousand dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture.

200. A person who—

Offences related to prohibited, restricted and uncustomed goods

(a) imports or carries coastwise-

- (i) any prohibited goods, whether or not the goods are unloaded; or

- (ii) any restricted goods contrary to any condition regulating the importation or carriage coastwise of such goods, whether or not the goods are unloaded;
- (b) unloads after importation or carriage coastwise—
- (i) any prohibited goods; or
 - (ii) any restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation or carriage coastwise;
- (c) exports, carries coastwise, or puts on board any aircraft, vehicle or vessel, or brings to any Customs airport, Customs area, or place, to be put on board, for exportation or for use as stores or for carriage coastwise-
- (i) any prohibited goods; or
 - (ii) any restricted goods contrary to any condition regulating the exportation, use as stores, or carriage coastwise, of such goods;
- (d) acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she 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 such importation or carriage coastwise; or
 - (iii) uncustomed goods,
- commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both.

Payment of duty in addition to fine

201. Where on conviction for an offence under this Act, a person is liable to pay a fine, that person shall, unless the goods are prohibited goods or are ordered to be forfeited under this Act, pay duty on the goods in addition to the fine.

Offence to import or export concealed goods

202. A person who imports or exports any goods—

- (a) which are concealed in any way;

- (b) which are packed in any package, whether or not together with other goods in a manner likely to deceive any officer;
- (c) which are contained in any package of which the entry or application for shipment does not correspond with such goods,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the value of the goods involved.

203. A person who, in any matter relating to the Customs_ -

Offence to make or use
false documents

- (a) makes any entry which is false or incorrect in any particular, or
- (b) makes or causes to be made any declaration, certificate, application, or other document, which is false or incorrect in any particular; or
- (c) when required in accordance with this Act to answer any question put to him or her by an officer, refuses to answer such question or makes any false or incorrect statement in reply thereto; or
- (d) obtains any drawback, rebate, remission, or refund, or duty which to his or her knowledge he or she is not entitled to obtain; or
- (e) in any way is knowingly concerned in any fraudulent evasion of the payment of any duty; or
- (f) except by authority moves, alters, or in any way interferes with any goods subject to Customs control; or
- (g) brings into a Partner State, or has in his or her 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
- (h) counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any documents required or issued by, or used for the purpose of the Customs.

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars.

204. A person who, when required in accordance with this Act—

Offence to refuse to
produce documents, etc.

	(a) to produce any book, document, or other thing, in his or her possession or under his or her control; or
	(b) to perform any act, refuses or fails to do so;
	commits an offence.
Offence to interfere with Customs gear	205. A person who cuts away, casts adrift, destroys, damages, defaces, or in any way interferes with, any aircraft, vessel, vehicle, buoy, anchor, chain, rope, mark, or other thing used for the purposes of the Customs commits an offence and shall be liable on conviction to a fine not exceeding two thousand five hundred dollars.
Uncustomed goods found to be reported	206. A person who, on finding any uncustomed goods on land or floating upon, or sunk in, the sea, fails to report such discovery to the nearest officer commits an offence and shall be liable to a fine not exceeding two thousand five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture.
Goods offered on pretence of being smuggled	207. Where any goods are offered for sale under the pretence that they are uncustomed goods, then such goods whether or not they are in fact uncustomed, shall be liable to forfeiture.
Aiders, abettors, etc.	208. A person who aids, abets, counsels or procures the commission of an offence under this Act shall be deemed to have committed such offence and shall be liable to the penalty prescribed for such offence under this Act.
General penalty.	209. (1) A person who commits an offence under this Act for which no specific penalty is provided shall be liable to a fine not exceeding five thousand dollars. (2) Where, on conviction for an offence under this Act, a person becomes liable to a fine not exceeding a specified amount, 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, the Commissioner shall cause the goods to be appraised by the proper officer who shall appraise the goods according to section 122, and no regard shall be had to any damage or injury sustained by such goods. (3) A certificate of the appraised value given under the hand of the Commissioner, shall be <i>prima facie</i> evidence of the value of those goods.
Goods liable to forfeiture.	210. 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) any prohibited goods;

- (b) any restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;
- (c) any uncustomed goods;
- (d) any goods which are imported, exported or transferred, concealed in any manner, or packed in any package, whether with or without other goods in a manner appearing to be intended to deceive any officer;
- (e) any goods which are imported, exported or transferred contained in any package of which the entry, application for shipment, or application to unload does not correspond with such goods;
- (f) any goods subject to Customs control which are moved, altered, or in any way interfered with, except with the authority of any officer;
- (g) any goods in respect of which, in any matter relating to the Customs, any 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; and
- (h) any goods in respect of which any drawback, rebate, remission or refund of duty has been unlawfully obtained.

211. (1) A vessel of less than two hundred and fifty tons register, and any vehicle, animal, or other thing, made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise, of any goods liable to forfeiture under this Act shall itself be liable to forfeiture.

Vessels, etc., liable to forfeiture

(2) An aircraft or any vessel of two hundred and fifty tons register or more made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise, of any goods liable to forfeiture under this Act shall not itself be liable to forfeiture but the master of any such aircraft or vessel commits an offence and shall be liable to a fine not exceeding ten thousand dollars; and such aircraft or vessel may be seized and detained until the fine is paid or security given.

(3) Where any 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.

212. (1) Where any goods are liable to forfeiture under this Act, then the package in which such goods are, and all the contents of such package, shall also be liable to forfeiture.

Provisions relating to goods liable to forfeiture

(2) Where any 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 such information to be available at the port of shipment, then, notwithstanding this Act, the goods shall not on importation be liable to forfeiture but shall be re-exported, or otherwise disposed of, in such manner as the Commissioner may determine; and pending the re-exportation or disposal of the goods shall be subject to Customs control.

Power to seize goods liable to forfeiture, etc.

213. (1) An officer or a police officer or an authorised public officer may seize and detain any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he or she has reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods animals or other thing may be seized and detained regardless of the fact that any prosecution for an offence under this Act which renders that thing liable to forfeiture has been, or is about to be instituted.

(2) Where an aircraft, vessel, vehicle, goods, animal or other thing is seized and detained under this Act by a person other than a proper officer, the aircraft, vessel, vehicle, goods, animal or other thing seized and detained under this Act shall be delivered with full written particulars to the nearest Customs office or to such other place of security as the proper officer may consider appropriate;

(3) Where delivery of an aircraft, vessel, vehicle, goods, animal or other thing is not practical under subsection (2), notice in writing shall be given to the Commissioner at the nearest Customs office, of the seizure and detention, with full particulars of the aircraft, vessel, vehicle, goods, animal or thing seized and detained.

(4) Where a person seizing and detaining a thing liable to forfeiture under this Act is a police officer and that thing is or may be required for use in connection with any court proceedings to be brought otherwise than under this Act, the police officer may, subject to subsection (5) keep that thing in the custody of the police until those proceedings are completed or until it is decided that no proceedings shall be instituted.

(5) Where a thing seized is retained in the custody of the police under subsection (4) the following provision shall apply-

- (a) the police officer shall give notice in writing of the seizure and detention, and the intention to retain the thing in the custody of the police, together with full particulars of the thing, to the nearest Customs office;

- (b) an officer shall be permitted to examine that thing and take account at any time while it remains in the custody of the police;
- (c) where the court orders the release of that thing the Commissioner shall assess and collect any duty payable on that thing prior to restoration of the thing to the owner.

(6) Where a person, not being a proper officer, seizes and detains or has custody of the thing seized and detained, fails to comply with the requirements of this section or with any direction of the Commissioner, he or she commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand dollars or to both.

(7) The Commissioner may, at any time prior to the commencement of any proceedings relating to any aircraft, vessel, vehicle, goods, animal or other thing which had been seized under this Act, if he or she is satisfied that it was not liable to seizure, release and return it to the person from whom it was seized.

214. (1) Where any thing has been seized under this Act, then, unless such thing was seized in the presence of the owner of the thing, or, in the case of any 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 to the owner or, in the case of any aircraft or vessel, to the master:

Procedure on seizure

Provided that—

- (a) notice of seizure shall not be given in any case where any person has, within a 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 XVIII, and if, after any notice has been given but before condemnation of the thing in accordance with this Act—
 - (i) any such prosecution is brought, then such thing shall be dealt with in accordance with section 215 as if such notice had been given;
 - (ii) the offence is so compounded, then such thing shall be dealt with in accordance with Part XVIII as if no such notice had been given;
- (b) where any such thing has been seized in the presence of any 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 to any other person coming within such definition;

(c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;

(d) where a person coming within such definition of owner is not known, then it shall not be necessary for the officer effecting the seizure to give notice to any person.

(2) Where any goods which are of a perishable nature or are animals are seized, the Commissioner may direct that such goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of the sale shall be retained and dealt with as if they were the seized goods.

(3) Where any thing liable to forfeiture under this Act has been seized, then—

(a) if any 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 215;

(b) in any other case, the thing shall be detained until one month after the date of the seizure, or the date of any notice given under subsection (1), as the case may be; and if a claim is not made as provided in subsection (4) within a period of one month, such thing shall be deemed to be condemned.

(4) Where any thing liable to forfeiture under this Act has been seized, then, subject to subsection (1) (a) and subsection (3).

(a) the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim such thing.

(5) Where any 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.

(6) The Commissioner may permit such thing to be delivered to the person making a claim, in this Part referred to as the claimant under subsection (4), subject to the claimant giving security for the payment of the value of the thing, as determined by the Commissioner in the event of condemnation of the thing.

215. (1) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of the offence, then the conviction of the person of the offence shall, without further order, have effect as the condemnation of the thing.

Effect of conviction, etc. on things liable to forfeiture.

(2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then, on the acquittal of such person, the court may order the thing either—

- (a) to be released to the person from whom it was seized or to the owner thereof; or
- (b) to be condemned.

216. (1) Where any notice of claim has been given to the Commissioner in accordance with section 214, the Commissioner may, within a period of two months from the receipt of such claim, either—

Procedure after notice of claim

- (a) by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of such thing within two months of the date of such notice; or
- (b) himself or herself institute proceedings for the condemnation of such thing.

(2) Where the Commissioner fails within the period of two months either to require the claimant to institute proceedings, or the Commissioner fails to institute proceedings, in accordance with subsection (1), then such thing shall be released to the claimant:

Provided that if the thing is prohibited goods or restricted goods which has been imported, or carried coastwise or attempted to be exported in contravention of this Act, the thing shall not be released to the claimant but may be disposed of in such manner as the Commissioner may direct.

(3) Where the Commissioner has, in accordance with subsection (1), required the claimant to institute proceedings within the period of two months and the claimant has failed to do so, then on the expiration of the period the thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of in such manner as the Commissioner may direct.

(4) Where any proceedings have been instituted in accordance with this section, then—

- (a) if the court is satisfied that a thing was liable to forfeiture under this Act, the thing shall be condemned;

- (b) if the court is not so satisfied, the things shall be released to the claimant:

Provided that the court shall not release the thing to the claimant unless it is satisfied that the claimant is the owner or, by reason of any interest in the thing, is entitled to the possession thereof and if the court is not so satisfied, the thing shall be condemned as if no claim had been made.

Provisions relating to condemnation.

217. (1) Where any thing 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 any owner of the thing was in no way concerned with the act which rendered the thing liable to forfeiture.

(2) Where any thing is condemned under this Act, then—

- (a) subject to section 218, the thing shall be forfeited and may be sold, destroyed, or otherwise disposed of in such manner as the Commissioner may deem fit;
- (b) the condemnation of the thing shall have effect as from the date when the liability to forfeiture arose;
- (c) the condemnation shall, subject to any appeal in any proceedings which resulted in the condemnation be final and, save as provided in section 218, no application or proceedings for restoration or in detinue by any person shall lie.

Restoration of seizures

218. Where any thing has been seized under this Act then the Council may, whether or not the thing has been condemned, direct that that thing be released and restored to the person from whom it was seized or to the owner, upon such conditions as the Council may deem fit.

PART XVIII

SETTLEMENT OF CASES BY THE COMMISSIONER

Power of Commissioner to compound offence

219. (1) The Commissioner may where he or she is satisfied that any person had committed an offence under this

Act in respect of which a fine is provided or in respect of which any thing is liable to forfeiture, compound the offence and may order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may deem fit; and the Commissioner may order any thing liable to forfeiture in connection with the offence to be condemned.