

CHAPTER 472**THE CUSTOMS AND EXCISE ACT****ARRANGEMENT OF SECTIONS****PART I—PRELIMINARY**

Section

1. Short title.
2. Interpretation.

PART II—ADMINISTRATION

3. Provisions relating to staff.
4. Customs seal and flag.
5. Officer to have powers of police officer.
6. Hours of attendance.
7. Offences by or in relation to officers.
8. Disclosure and exchange of information.
9. Appointment and fixing of limits of ports, customs areas, etc.
10. Accommodation on wharves.
11. Offences in respect of customs areas, etc.
12. Customs control of goods.
13. Liability for loss, etc., through negligence of officer.

PART III—IMPORTATION***Prohibited and restricted imports***

14. Prohibited and restricted goods.
15. Power to prohibit, etc., imports.
16. Exemption of goods in transit, etc.

Arrival and report of Aircraft and Vessels

17. Procedure on arrival.
18. Place of mooring, etc.
19. Restriction on boarding vessels before proper officer.
20. Report of aircraft and vessels.
21. Master to answer questions, etc.
22. Goods in transit shed, etc., deemed in aircraft or vessel.
23. Goods reported to be unloaded.
24. Master of wreck, etc., to report.

Arrival Overland

25. Arrival overland.

Unloading, Removal, Entry, Examination and Delivery of Cargo

26. Unloading, etc.
27. Entry of cargo.
28. Surplus stores may be entered.
29. Provisions relating to mail, personal baggage, etc.
30. Entry in absence of documents.
31. Provisions relating to goods liable to *ad valorem* duty.
32. Delivery from customs area in special circumstances.
33. Re-packing, etc., in customs area, etc.

Provisions Relating to Customs Warehouse

34. Goods deposited in a customs warehouse may be sold, etc.
35. Goods deemed to be in a customs warehouse.

PART IV—WAREHOUSING OF GOODS

Provisions Relating to Bonded Warehouses

36. Dutiable goods may be warehoused.
37. Procedure on warehousing.
38. Removal to warehouse of goods entered therefor.
39. Entry of warehoused goods.
40. Operations in a warehouse.
41. Re-gauging and re-valuation.
42. Delivery from warehouse in special circumstances.
43. Removal to another warehouse or bonded factory.
44. Warehoused goods may be delivered as stores.
45. Abandonment, etc., of warehoused goods.
46. Period of warehousing of goods.
47. Examination of warehoused goods on delivery.
48. Access to warehouse.
49. Removal of goods after entry for home use, etc.
50. Penalty for unlawfully taking, etc., warehoused goods.
51. Commissioner may license warehouses.
52. Procedure on revocation or expiry of licence.
53. Warehouse keeper to provide facilities.
54. Stowage and storage of goods in bonded warehouse.
55. Removal of goods from private to general warehouse.
56. Warehouse keeper to produce goods deposited.

Provisions Relating to Government Warehouses

57. Goods in Government warehouse liable to rent, etc.
58. Removal, etc., of goods in Government warehouse.

PART IV A- PROVISIONS RELATING TO MANUFACTURE UNDER BOND

- 58A. Licensing of bonded factories.
- 58B. Entry of Premises as bonded factories.

- 58C. Revocation of Licence, etc.
- 58D. Entry of Plant Machinery, etc. for expectation or for home use.
- 58E. Manufacturer to provide facilities.
- 58F. Receipt and storage of raw materials and manufactured goods.
- 58G. Provisions relating to stock registers.
- 58H. Manner of dealing with deficiencies and excesses in stock rooms.
- 58R. Importation of equipment, machinery, raw materials etc.
- 58J. Provisions relating to goods in bonded factory.
- 58K. Delivery from bonded factory in special circumstances.
- 5BL. Goods from bonded factory may be entered for home use.

PART V—EXPORTATION

Prohibited and Restricted Exports

- 59. Prohibited and restricted goods.
- 60. Power to prohibit, etc., exports.
- 61. Exemption of good in transit, etc.

Entry Outwards and Loading of Aircraft and Vessels

- 62. Entry outwards of aircraft or vessel.
- 63. Entry of cargo for export.
- 64. Loading, etc.
- 65. Provisions relating to personal baggage, etc.
- 66. Goods for export not to be discharged in Kenya.
- 67. Provisions relating to export of certain goods.
- 68. Stores for aircraft and vessels.
- 69. Short-shipment of non-bonded goods.
- 70. Export goods stored at risk of owner.
- 71. Goods liable to export duty.

Transit and Transshipment Goods

- 72. Goods in transit or for transshipment.

PART VI--IMPORTATION AND EXPORTATION BY POST

- 73. Application of Act to postal articles.
- 74. Time of entry of postal articles.

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

Departure and Clearance of Aircraft and Vessels

- 75. Clearance required for departure to foreign port.
- 76. Grant of clearance.
- 77. Clearance to be produced.
- 78. Deficiency or surplus in cage or stores.

79. Aircraft or vessels to bring to at boarding station.

Departure Overland

80. Departure overland.

PART VII-- CARRIAGE OF GOODS COASTWISE

- 81. Meaning of carriage coastwise.
- 82. Carriage coastwise in aircraft or vessel from foreign port.
- 83. Loading, etc., of coastwise cargo.
- 84. Transire required for departure coastwise.
- 85. Transire to be delivered on arrival.
- 86. Power of Commissioner to vary procedure.
- 87. Entry outwards of aircraft, etc., carrying goods coastwise.
- 88. Coasting vessel, etc., not to deviate from voyage.
- 89. Examination of coasting aircraft, coasting vessel and goods.

PART IX--MANUFACTURE OF EXCISABLE GOODS

- 90. Licence required to manufacture excisable goods.
- 91. Application for and grant of licence.
- 92. Transfer of licence.
- 93. Power to revoke, etc., licence.
- 94. Effect of revocation, etc., of licence.
- 95. Provision of facilities for excise control.
- 96. License to keep books, etc.

Entry of Premises and Plants

- 97. Manufacturers' entry.
- 98. Rooms and plant to be marked.

Provisions Relating to the Manufacture of Spirit

- 99. Power of Commissioner to direct that Act and regulations shall not apply.
- 100. Distiller's and rectifier's warehouse.
- 101. Restriction on delivery of immature spirits.
- 109. Restriction on carrying on of other trades by distiller, rectifier or denaturer.
- 103. Keeping or use of still otherwise than by distiller or rectifier prohibited.
- 104. Deposit of rectified or compounded spirits in bonded warehouses.
- 105. Penalty for excess or deficiency in stocks of spirits.
- 106. Denaturing of spirits
- 107. Application of Part IX and sections 97 and 98 to the denaturing of spirits.

Provisions Relating to Manufacture of Excisable Goods Other than Spirits

- 108. Storage of excisable goods after manufacture.
- 109. Provisions relating to stock book and returns.

- 110. Deficiency or excess in stock of licensee.
- 111. Provisions relating to manufacture of tobacco
- 112. Provisions relating to brewing book.
- 113. Notice of brewing may be required.
- 114. Provisions relating to brewing.
- 115. Provisions relating to false declaration of original gravity of beer.
- 116. Liability of beer to excise duty.

PART XI--DUTIES

General Provisions

- 117. Imposition, rates, etc., of duty.
- 118. Arrangements for bilateral relief of duty.
- 119. Variation of rates of duty.
- 120. Effect of alteration of duty on contract for sale.
- 121. Effect of obligation to pay duty.
- 122. Recovery of duty.
- 123. Effect of alteration in classification of goods.
- 124. Time of entry for home use determines rates of duty.
- 125. Imposition of dumping duty.
- 126. Dumping and subsidy defined.

Value of Imported Goods, Excisable Goods and Goods for Export

- 127. Determination of value of imported goods.
- 127A. Determination of goods for export.
- 128B. Appraisal of Value of imported goods etc.
- 127C. Value of goods for excise duty purposes.

Computation of Duty: General Provisions

- 128. Adjustment for fractions of a shilling.
- 129. Duty computed on gross weight of package in certain cases.
- 130. Duty computed on reputed quantity in certain cases.
- 131. Commissioner may fix litre equivalent of other liquid measurement.
- 132. Allowance for tare.
- 133. Duty on package in certain cases.

Computation and Payment of Excise Duty on Spirits

- 134. Time of delivery determines rate of excise duty.
- 135. Duty on spirits--attenuation charge.
- 136. Ascertainment of strength, weight, and volume of spirits.

Payment of Duty on Excisable Goods Other than Spirits

- 137. Time of delivery determines rate of excise duty, etc.

Exemption and Remission of Duty

- 138. Power of Minister to remit duties.
- 139. Remission of excise duty.
- 140. Exemption from certain duties of goods remaining on board.
- 141. Exemption from duty on goods entered for exportation,
- 141. Exemption from certain duties of goods entered for exportation, etc.
- 142. Exemption from certain duties of certain re-imports.
- 143. Exemption from certain duties of temporary imports.
- 144. Remission of certain duties on lost or destroyed goods.

Refund, Rebate, and Drawback

- 145. Refund of certain duties to privileged institutions and personnel, etc.
- 146. Refund of certain duties on pillaged, etc., goods and of duty paid in error.
- 147. Refund of certain duties on returned or destroyed goods.
- 148. Rebate of certain duties on damaged goods.
- 149. Rebate of excise duty.
- 150. Repealed by 8 of 1991 s. 24.
- 151. Drawback of certain duties on exportation.
- 152. Duties to apply proportionately for refund, rebate, etc.
- 153. Refund of excise duty on compounded spirits in bonded warehouses.

Miscellaneous Provisions

- 154. Derelict goods, etc., liable to duty.
- 155. Goods imported duty free liable to certain duties on disposal.
- 156. Excisable goods granted remission, etc., liable to duty on disposal.
- 157. Excisable goods liable to duty on re-importation.
- 158. Short levy or erroneous refund.
- 158A. Duties not to be abated on conviction.
- 158B. Commissioner may refrain from collecting duty in certain cases.
- 159. Disputes.

PART XII--PROVISIONS RELATING TO SECURITIES

- 160. Commissioner may require security.
- 161. General provisions relating to giving of security.
- 162. Provisions relating to sureties.
- 163. Enforcement of bond.

PART XIII--CUSTOMS AND EXCISE AGENT

- 164. Authority of agents.
- 165. Liability of duly authorized agent.
- 166. Liability of owner for acts of duly authorized agent.
- 166A. Agents appointed by the Commissioner.

PART XIV--PREVENTION OF SMUGGLING AND EVASION

Powers of Officers

167. Power to require vessels, etc., to bring to.
168. Power to require vessels, etc., to depart.
169. Power to patrol freely and moor vessels, etc.
170. Power to board vessels, etc., and search.
171. Persons entering or leaving Kenya to answer questions concerning baggage.
172. Power to search persons.
173. Power of arrest.
174. Power to search premises.
175. Power to seal, etc., buildings, etc.
176. Search warrants.
177. Power to require production of books, etc.
178. Power to cap for aid.

Offences

179. Assembling to contravene provisions of Act.
180. Offences with violence, etc.
181. Attempts to commit offences.
182. Offence to warn offender.
183. Offence to assume character of officer.
184. Master of vessel, etc., used for smuggling or evasion guilty of offence.
185. Offences in respect of prohibited, restricted and uncustomed goods.
186. Offence to import or export concealed goods.
187. Offence to make or use false documents.
188. Offence to refuse to produce documents, etc.
189. Offence to use false measures.
190. Offence to interfere with customs property.
191. Offences in connection with excisable goods.
192. Uncustomed goods found to be reported.
193. Goods offered on pretence of being smuggled.
194. Aiders, abettors, etc.

PART XV--PENALTIES, FOREFEITURES AND SEIZURES

195. General penalty.
196. Goods liable to forfeiture.
197. Vessels, etc., liable to forfeiture.
198. Provisions relating to goods liable to forfeiture.
199. Power to seize goods liable to forfeiture, etc.
200. Procedure on seizure.
201. Effect of conviction, etc., on things liable to forfeiture.
202. Procedure after notice of claim.
203. Provisions relating to condemnation.
204. Restoration of seizures.

PART XVI--LEGAL PROCEEDINGS

- 205. Proceedings triable in subordinate court of first class.
- 206. Actions by or against the Commissioner.
- 207. Limitation of proceedings.
- 208. Provisions relating to proof, etc., in proceedings.
- 209. Provisions relating to penalties for offences.
- 210. Place of trial.
- 211. Protection of witnesses.
- 212. Reasonable grounds a defence in any action against officer.
- 213. Power of officer to prosecute.

PART XVII --SETTLEMENT OF CASES BY THE COMMISSIONER

- 214. Power of Commissioner to compound offence by agreement first class.

PART XVIII –MISCELLANEOUS

- 215. Attendance of master before Commissioner.
- 216. Provisions relating to prescribed forms.
- 217. Provisions relating to all documents.
- 218. Production of documents.
- 219. Power to require information from importers dumping.
- 220. Provisions relating to declarations and signatures
- 221. Receipts for payment on entry.
- 222. Service of notices, etc.
- 223. Provisions relating to loading, etc., of goods.
- 224. Proper officer may take or allow samples to be taken.
- 225. Recovery of duty by distress.
- 225A. Penalty for late payment.
- 225B. Security on property for unpaid duty, etc.
- 226. Rewards.
- 227. Auctioneers legislation not to apply to sales.
- 228. Licensing of aircraft, vessels and vehicles conveying subject to customs control.
- 229. Application of Act to importation, etc., overland.
- 230. Provisions relating to commissioned vessels.
- 231. Excise licensee to furnish annual audit certificate.
- 232. Application of air legislation.
- 233. Power of Commissioner in special cases.
- 234. Regulations.
- 235. Saving.

SCHEDULES

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

Import Duties.

Suspended Duties.

Exemption from Import Duty, Suspended Duty

FOURTH SCHEDULE and Dumping Duty.
Export Duties.

The first four Schedules are included in a separate booklet

FIFTH SCHEDULE Excise Duties
SIXTH SCHEDULE Form Of Warrant of Distress.
SEVENTH SCHEDULE Value of Imported Goods.
EIGHTH SCHEDULE Prohibited and Restricted Goods.
NINTH SCHEDULE Privileged International Organizations and
Personnel.
TENTH SCHEDULE Declaration by Officer

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.

Enacted by the Parliament of Kenya as follows:-

PART I—PRELIMINARY

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

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

13 of 1979, s.2,
10 of 1980, s.2, "*agent*" in relation to an aircraft, vessel or vehicle includes a person who
10 of 1988, s.2, notifies the proper officer in writing that he intends to act as the agent
8 of 1989, s. 2, 8 and who, or on whose behalf a person authorized by him, signs any
of 1991, s. 2, 9 document required or authorized by this Act to be signed by an agent:
of 1992, s. 2, 4
of 1993, s. 2, 5 Provided that the owner of an aircraft, vessel or vehicle, if resident or
of 1994, s. 2, 4 represented in Kenya, shall either himself or through his representative
of 1993, s. 2, 6 be deemed to be the agent for all the purposes of this Act if no agent is
of 1994, s.2, 13 appointed;
of 1995, s.2, 8
of 1997, s.2, 5 "*aircraft*" includes every description of craft used in aerial navigation;
of 1998, s. 2, 4
of 1999, s. 2, 9 "*approved*" means approved by the Commissioner;
of 2000, s. 2, 6
of 2001, s. 2, 7 "*approved place of loading*" and "*approved place of unloading*" mean a
of 2002, s.2, 15 quay, jetty, wharf or other place, including any part of a port or customs
of 2003, s. 2, 4 airport, appointed by the Commissioner by notice in accordance with
of 2004 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 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 potable water with other suitable ingredients and which contains more than two

per centum of proof spirit but does not include

(a) any beer made or brewed by any person and which is not offered for ,or intended to be offered for sale; or

(b) any kind of beer which the Minister may, by order in the Gazette 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;

"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-

(a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act; or

(b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act to another Commissioner, that other Commissioner;

"*compounded spirits*" means spirits which have been distinctly altered in character by redistillation 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 drawbacks;

"*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, imposition, tax or surtax imposed on goods and services 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;

"*excise stamp*" means an excise stamp prescribed by the Commissioner under section 116B.

"*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 or on behalf of the person by or on behalf of whom the goods appraised were produced,

but does 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 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;

"information technology" means any equipment or software for use in storing, retrieving, processing or disseminating information;

"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;

"*methyated spirits*" means spirits denatured in accordance with a formula prescribed by regulations for methyated 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 the fermentation of a mash of cereal grain or vegetable or grain or vegetable products with or without the 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 in an open market sale between buyer and seller independent of each other;

"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 Postal Corporation of Kenya established under the Postal Corporation of Kenya Act, 1998;

"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 the seller or 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;

"regional market" means the countries with which Kenya shares a common border, and includes Rwanda, Burundi and the Congo;

"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;

"*sufferance 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 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;

"*tax computerized system*" means any software or hardware for use in storing, retrieving, processing or disseminating information relating to excise duty.

"*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 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;

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

"*transaction value*" means the price paid or payable for imported goods, as determined in accordance with the seventh schedule;

"*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;

"*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 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 use 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 or place, then, in relation to each port or place within Kenya from which it may depart, it shall be deemed to be departing there from 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 stored or 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 motor cycle)-

(aa) has been in use for a period not exceeding five years, the additional duty shall be twenty per centum;

(bb) has been in use for a period exceeding five years, but not exceeding eight years, the additional duty shall be twenty per centum or thirty thousand shillings, whichever is the higher;

(cc) has been in use for a period exceeding eight years the additional duty shall be twenty per centum or sixty 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 First Schedule, whichever is the higher, or such other additional duty as the Minister may, by notice

in the Gazette, specify, shall be payable in respect of all goods entered for home use from an export processing zone.

(iii) an additional duty of ten per centum shall be payable in respect of temporary imports when entered for home use;

(iv) an additional duty of ten per centum shall be payable in respect of transit goods when entered for home use;

(II) goods shall be deemed to be unassembled if imported in a completely knocked down form by an approved assembler of such goods appointed by the Commissioner by notice in the Gazette:

Provided that the Commissioner may, by notice in the Gazette, specify goods which shall, notwithstanding the provisions of this paragraph, not be deemed to be unassembled.

(m) subject to paragraph (II) 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.

(n) 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 finished 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 descriptions providing a more general description; however where two or more tariff descriptions 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 material or component 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 provisions 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, on 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 those 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-

(a) tariff description and the classification of goods;

(b) units of quantities

and the rules of interpretation of that Schedule set out in subsection (3) shall apply to the Second, Fourth and Fifth Schedules.

PART II - ADMINISTRATION

Provisions relating to staff. s.3, 4 of 2004

3.(1) The Commissioner 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.

4.(1) There shall be a seal of the customs.

(2) There shall be a flag of the customs which shall distinguish vessels employed in the service of the customs from other vessels.

Officer to have powers of performance of his duty. police officer.

5. 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.

Hours of attendance.

6.(1) The working days and hours of general attendance of officers shall be such as may be prescribed by the Commissioner.

(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 there for 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.

(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 there for 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.

Offences by or 7.(1) An officer who -
in relation to
officers.

(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

(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

(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 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 8. Notwithstanding any other provisions of this Act, the Commissioner
exchange of may -
information. 4
of 1993, s. 3

(a) disclose information to a person in the service of the Government in a 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, 15 of 2003, s. 3., 4 of 2004, s. 4

9.(1) Subject to subsection (1A) 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.

(1A) Notwithstanding the provisions of subsection (1), transit sheds and other customs areas shall -

(a) only be located in plots of not less than 2.5 hectares –

Provided that this requirement shall not apply to transit sheds appointed before 12th June, 2003;

(b) have a railway siding in case of transit sheds handling goods imported

by sea;

(c) be located not more than one kilometre from the runway, in the case of transit sheds used for the handling of goods imported by air;

(d) be located within or next to existing customs areas, in the case of transit sheds at frontier ports;

(e) where located more than ten kilometers from the port, not be used for the handling of transit or transshipment goods;

(ee) where used to consolidate cargo, comply with such conditions as the Commissioner may, by notice in the Gazette, prescribe;

(f) if appointed before the commencement of this subsection, comply with this subsection not later than the 31st December 2004.

(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-

(a) 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; and

(b) the Commissioner may revoke the appointment of any transit shed whose average monthly revenue in the calendar year ending on 31st December 2004, or any subsequent year, is less than one hundred million shillings

(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.

(4) Any person who –

(a) deposits transit goods in a place other than one appointed by the Commissioner under subsection (1);

(b) fails to comply with, or contravenes, any of the conditions prescribed by the Commissioner with respect to the operation of transit sheds;

(c) deposits or allows any person to deposit prohibited in the transit shed;
or

(d) is in any way involved in fraudulent activity with respect to the goods deposited in a transit shed,

Shall be guilty of an offence and liable to a fine not exceeding one million, five hundred thousand shillings, and the Commissioner may revoke the appointment of the transit shed to which the offence relates.

Accommodation 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. **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. s.3.

(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 **12.**(1) The following goods shall be subject to customs control - of goods.

(a)all imported goods, including goods imported through the Post Office, 10 of 1987, s. 2, from the time of importation until delivery for home use or until 10 of 1990, s. 2, exportation, whichever first happens;

10 of 1988, s. 3,

9 of 1992, s. 3, (b)all goods under drawback from the time of the claim for drawback 13 of 1995, s. 4, until exportation;

8 of 1997, s.3.

(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 exceeding five hundred thousand shillings

or to imprisonment for a term not exceeding three years, or to both, and any goods in respect of which the offence has been committed shall be liable to forfeiture.

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

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. **15.(1)** The Minister may, by order published in the Gazette, amend Part 13 of 1978, Sch. (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.

(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 importation thereof either from all places or from any particular country or place.

Exemption of goods in transit. **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 etc. 100 of or vessel, unless the goods come within item 2 of Part A of the Eighth 1980, s. 2, 10 of Schedule, or are goods of which the importation in transit, or for 1986, s. 2, 10 of transshipment, or as stores for an aircraft or vessel, is expressly prohibited 1990, s. 3, 4 of or restricting the importation of goods.

1993, s. 4.

(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 **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 the 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 vessels. **20.**(1) The master or agent of an aircraft or vessel, whether laden or in ballast, shall, except where otherwise provided in regulations, within 5 of 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 ownership of goods specified in the report where a charge in such ownership is intended, or to amend the ownership of goods specified in the report where a charge in such ownership 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; or

(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 over-board, 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 **21.(1)** The master or agent of an aircraft or vessel -
answer

questions, etc. (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, disembarks, 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.

transit shed, **22.(1)** Goods which have been unloaded and landed into a transit shed or etc., deemed in a customs area shall be deemed to be still in the importing aircraft or aircraft or vessel until they are delivered from the transit shed or customs area; and vessel. so long as they remain therein the owners or agents of the aircraft or vessel shall continue to be responsible therefore as if the goods had not

7 of 2002, s. 3. 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 in or inland transit shed:

Provided that-

(a) where the owners or agents of an aircraft or vessel fail to pay any duties or taxes in respect of any goods under this subsection, the

Commissioner may require the transit shed operator to pay such duties or taxes in full; and

(b) where the owners or agents of an 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 of an aircraft or a vessel, or as the case may be, 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.

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 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 and 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. **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 a 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 officer:

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.

(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.

Entry of cargo. 4 of 1999, s.4. **27.**(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 -

(a) home use;

(b) warehousing;

(c) transshipment; or

(d) transit.

(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.

(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.

(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.

(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.

Provided that where goods are entered before arrival at the port of discharge of the aircraft or vessel under subsection (3), the thirty days period shall run from the date the aircraft or vessel commences

discharge.

Surplus stores **28.** The surplus stores of an aircraft or vessel may, with the permission of the proper officer, be entered for home use or for warehousing.

Provisions relating to mail, personal baggage, etc. **29.**(1) Notwithstanding sections 26 and 27 -

(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 sub-section (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 section, then the proper officer shall cause the goods referred to in the declaration to be deposited in a customs warehouse.

Provisions relating to goods liable to duty *ad valorem*, then the entry shall be deemed to be a goods liable provisional entry.

to ad valorem

duty. 6 of 2001, s. 3

31. (1) Where goods entered in accordance with section 30 are goods liable to duty *ad valorem*, then the entry shall be deemed to be a goods liable provisional entry.

(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.

(3) Where the owner makes perfect entry in accordance with subsection (2), then the owner shall subtract from the amount held on deposit under that subsection, the full amount of duty payable in respect of the goods and shall refund the difference to the owner:

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.

Delivery from customs area in special circumstances.

32. (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.

(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.

Re-packing, etc., in customs area, etc.

33. 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.

Goods deposited in a

34. (1) Where goods which are deposited in a customs warehouse are not removed within twenty-one days after deposit, then, the proper officer

customs 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 to Customs for sale by public auction.

of 1997 s. 4, 4

of 1999, s. 5 9 (2) Subject to subsections (3A) and (4) 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:

6

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 nation, a state corporation, an aid agency or by the Government or a state corporation of a neighboring 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 and shall be re-exported or destroyed within thirty days of the date the goods are declared prohibited imports.

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

(3A) Where goods are not sold at public auction held under subsection (2), they may be sold at a subsequent auction without an additional notice of sale being given.

(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 house.

(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; and
- (d) the port charges;
- (e) the freight charges, if any.

(7) Where after the proceeds of sale have been applied in accordance with subsection (6) there is a balance, 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. **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 were entered and deposited therein within seven days from the date of release, or within such further period as the Commissioner may allow for bonded warehouses situated away from the port of importation.

(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 of goods 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 warehoused goods. of **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, 9 of 1992, s.4, 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 parked 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 therefore 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 imparted 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 in 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. **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 thereof 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.

(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.

Removal to another warehouse or bonded factory. **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 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) 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 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.

Abandonment, etc., of warehoused goods. **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.

Abandonment, etc., of warehoused goods. **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. **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 for further period of six months or such longer periods as the Commissioner may allow; but those goods shall not be re-warehoused more than once:

1983, s.2, 3 of 1984, s.2, 10 of 1987,s.4, 10 of 1990,s.5, 10 of Provided that in the case of wines and spirits warehoused by licensed

1986,s.4, 4 of excise manufacturers and duty free shops or locally assembled motor
 1993, s.6, 8 of vehicles warehoused by approved motor vehicle assemblers, the
 1996,s.2A, 8 of Commissioner may, in addition to the period of re-warehousing
 1997,s.4A, 5 of permitted in this subsection allow such further period of re-warehousing
 1998,s.4, 4 of as he may deem appropriate.

1999,s.7, 11 of
 2000,s.5.

(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 sections 36 and 37.

(3) Where duty becomes due and payable under subsection (2) and the owner fails to pay the duty within twenty-one days or such further period as the Commissioner may allow, from the date the duty becomes due and payable, the goods shall be sold by public auction after one after twenty one days' 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 47.(1) Where warehoused goods are delivered for home use, for
 warehoused exportation, for removal to another warehouse, or for use as stores for
 goods on aircraft or vessels, or are to be re-warehoused under section 46, then the
 delivery. 8 of proper officer may examine and take stock of the goods.
 1983,s.6.

(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:

Provided that where the goods are to be re-warehoused, the duty on the deficiency shall be forthwith paid by the owner of the goods and the re-warehousing entry shall be made according to the result of the examination.

Access to warehouse. **48.**(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.

(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.

(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.

Removal of goods after entry for home use, export or sale. **49.**(1) Any goods deposited in a warehouse or bonded factory which are after entered for home use or for export or sold in accordance with this Act shall-

use, export or sale. 5 of 1998, s.5.

(a) in the case of goods entered for home use or sold in accordance with this Act, be removed from such warehouse or factory within fourteen days of such entry or sale, as the case may be; and

(b) in the case of goods entered for export, be removed from the warehouse or bonded factory and exported within thirty days or within such longer period, not exceeding thirty days, as the Commissioner may, in any particular case, allow.

(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.

Penalty for **50.** A person who-
unlawfully
taking, etc., (a) takes, or causes or permits to be taken, goods from a warehouse
warehoused otherwise than in accordance with this Act; or
goods. 10 of
1980,s.2. (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 both.

Commissioner **51.**(1) The Commissioner may on application license a premises, room
may license or enclosed area as a bonded warehouse for the deposit of goods liable
warehouses. 14 to duty; and the Commissioner may refuse to issue a licence without
of 1982, s. 4, 4 assigning any reason, or may by notice in writing suspend, revoke or
of 1999, s. 8, 15 refuse to renew a licence on the grounds stated in the notice.
of 2003, s. 5.

Cap 486.s.8, 4 (1A) An application under subsection (1) shall be in such form and
of 2004 comply with such requirements as the Commissioner, may by notice in
the Gazette, prescribe.

(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 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.

(4A) A licence issued under this section shall be subject to such conditions as the Commissioner may, by notice in the Gazette, prescribe

(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.

Commissioner may license premises situated in a port as a duty free shop, for the deposit of duty free shops. dutiable goods on which duty has not been paid and which have been entered for use as shipstores or for sale to passengers departing to places outside Kenya.

(1) The Commissioner may, on application, license a room or premises situated in a port as a duty free shop, for the deposit of dutiable goods on which duty has not been paid and which have been entered for use as shipstores or for sale to passengers departing to places outside Kenya.

(2) An application under subsection (1) shall be in such form and comply with such requirements as the Commissioner, may by notice in the Gazette, prescribe.

(3) The Commissioner may refuse to issue a licence under this section without assigning any reason, or may, by notice in writing, revoke or refuse to renew a licence on such grounds as may be specified in the notice

(4) Subject to this section, the provisions of this Act relating to bonded warehouses shall, *mutatis mutandis*, apply to duty free shops.

Procedure on revocation of licence. 52.(1) Where the Commissioner revokes a licence under section 51, he or shall cause to be served on the ware-house keeper notice of revocation of 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 ware-house 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
provide
facilities.

53.(1) A warehouse keeper shall -

to

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

bonded warehouse. (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 contravention 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 **55.**(1) Where the warehouse keeper of a private bonded warehouse goods from contravenes any of the provisions of this Act the proper officer may private to require him within such time as the proper officer may direct, to remove general warehouse. all or any of the goods ware-housed 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 (1) 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 **56.**(1) A warehouse keeper shall, on request, produce to the proper keeper to officer all goods deposited in his bonded ware-house.

produce goods deposited. (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 **57.** Where goods are deposited in a Government warehouse, they shall Government warehouse 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 liable to rent, 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 etc. proceeds thereof applied in accordance with section 34.

Removal, etc., **58.** Where goods are deposited in a Government ware-house the proper of goods in

Government warehouse. officer may -

(a) remove, at the expense of the customs, the goods from that warehouse to another Government ware-house;

(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, 4 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) Applications 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 bonded factories. 10 of 1988, s.5. of **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 of 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 is 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. of **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 to **58E.**A manufacturer shall -
provide

facilities. 10 of (a) provide office accommodation and just weights, scales, measures
1988, s. 5. 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 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-opering, weighing and taking stock of the goods therein whenever the proper officer so requires.

(2) Where a manufacturer contravenes any 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 **58F.**(1) All raw materials, whether imported or obtained locally,
storage of raw received in the bonded factory shall be stored in a room of which an
materials and entry for the purpose has been made in accordance with section 58B (1)
manufactured and which shall be known as the raw materials stock room.
goods. 10 of
1988, s. 5.

(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 1998, s.5.

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

(a) a raw materials 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 registers 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 or manufactured goods in a bonded factory he establishes excesses or deficiencies and deficiencies which the licensee fails to account for to the satisfaction of excesses in the proper officer, the licensee shall be guilty of an offence and liable to stock rooms. 10 of 1988, s.5.

58H.(1) Where upon the proper officer taking stock of the raw materials or manufactured goods in a bonded factory he establishes excesses or deficiencies which the licensee fails to account for to the satisfaction of excesses in 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 been 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 Kenyan 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 to

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 as acquisition.

Importation of **58I.**(1) All items of plant, machinery, spares and imported raw equipment, materials for use in the manufacture of goods under bond, shall be duly machinery, raw entered and delivered to the bonded factory within such time and materials, etc. subject to such conditions as the Commissioner may prescribe; and if 10 of 1988, s. 5, the goods described in this section are not so delivered, then, as from 4 of 1993, s. 9. the date of importation, the plant, machinery, spares and raw materials 13 of 1995, shall be deemed to be prohibited goods, unless a satisfactory s.17. 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 **58J.**(1) Where goods are warehoused in a bonded factory the relating to Commissioner may, subject to such conditions as he may impose, goods in a permit the name of the owner of the goods in the account taken under bonded factory. section 58G to be changed if application therefore is made in the 10 of 1990, s. 6. 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 to 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 attaching 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.

58K.(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 entered for home use.

PART V - EXPORTATION

Prohibited and Restricted Exports

Prohibited and Restricted Exports.

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.

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

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.

Exemption of goods in transit, etc. 10 of 1980, s.2, 10 of 1986, s.5
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 1988, 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) no 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 not, 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. 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 which the offence has been committed shall be liable to forfeiture.

Goods for export not to be **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

discharged in the written permission of the proper officer and in accordance with such
 Kenya. 10 of conditions as he may impose, be discharged at any place within Kenya.
 1988, s. 8.

(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.

Provisions relating to export of certain goods.

67.(1) Before -

to (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 thereat 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 thereat 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 forth-with 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.

Stores
aircrafts
vessels.

for **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.

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 goods. 10 of 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.

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 prescribed; and

(b) notwithstanding section 13, they shall be so stored at the risk of the owner.

71. (1) Where goods are liable on export to duty, the amount of duty shall be stated on the export entry of the goods.

(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.

(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.

Transit or Transshipment Goods

72.(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.

(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.

72A. (1) The Commissioner may, on application by the owner, license any premises, room or enclosed area as a transit godown for the deposit of goods imported in bulk entered in transit, and may refuse to issue a licence without assigning any reason, or, by notice in writing revoke or refuse to renew a licence on the grounds stated in the notice.

(2) An application under subsection (1) shall be in such form and comply with such requirements as the Commissioner may, by notice in the Gazette, prescribe.

(3) A license under this section shall be issued subject to the payment of such fee as the Commissioner may, by notice in the Gazette, prescribe.

72B. (1) No person shall deposit goods entered in transit in any premises, other than a transit godown licensed under section 72A.

(2) Goods may only be deposited in a transit godown where they are entered in transit and are-

Storage of goods entered in transit.

(a) imported in bulk in solid, liquid or gaseous form;

(b) of a class prescribed by the Commissioner by notice in the Gazette; or

(c) of a class which the Commissioner has permitted, in writing, to be stored in a transit godown.

(3) Any person who –

(a) deposits goods in any premises; or

(b) being the owner or occupier of any premises, uses such premises to deposit goods, or permits any other person to deposit goods,

Contrary to the provisions of subsection (1) or (2), shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shilling, and in the case of a continuing offence, to a fine not exceeding five thousand shillings for every day or part thereof during which the offence continues.

PART VI - IMPORTATION AND EXPORTATION BY POST

Application of Act to postal article. 7 of 2002, s. 4. Provided that -

Cap.411.

(i) postal articles may be entered at such place and in such manner as the Commissioner may direct;

(ii) Provision of this Act may, in its application to postal articles, be modified or adapted by regulations.

(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.

(3) This section shall be in addition to, and not in derogation of, the provisions of the Postal Corporation of Kenya.

Time of entry of postal articles.

74. In the case of goods -

(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;

(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.

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.

75.(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.

(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.

Grant of clearance.

76.(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.

(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:

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 which, in the opinion of the proper officer, results from accident or inadvertence, by furnishing an amended or supplementary outward manifest in the prescribed manner.

(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.

(8) A master or agent who contravenes an undertaking 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.

Clearance to be produced. **77.**(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.

(2) The master of an aircraft or vessel who fails to produce the certificate of clearance on demand shall be guilty of an offence.

Deficiency or surplus in cargo or stores. **78.**(1) Where, on an aircraft or vessel being boarded 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.

(2) Where, on an aircraft or vessel being boarded 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.

(3) Where, on an aircraft or vessel being boarded 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 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 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 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. of **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.

Carriage coastwise aircraft or vessel from foreign port. 13 of 1979, s. 2. **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) When 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.

Transire required departure coastwise for **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 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
departure
coastwise

84.(1) No coasting aircraft or coasting vessel, nor an aircraft or vessel for 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 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
arrival.

85. (1) The master or agent of an aircraft or vessel, arriving at a port or place within Kenya carrying goods coastwise-

(a) shall forthwith deliver the transire to the proper officer of that port or place;

(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:

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.

(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.

Power of Commissioner to vary procedure. **86.**(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.

(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.

Entry outwards of aircraft, etc. carrying goods coastwise. **87.**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.

Coasting vessel, etc., not to deviate from voyage. **88.**The master or agent of a coasting aircraft or coasting vessel -
(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

(b) which, having deviated from its voyage or having taken on board 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.

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

(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 passenger's 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

(b)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

Licence required to manufacture excisable goods. 10 of 1980, s.2.

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

(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 offence has been committed shall be liable to forfeiture.

Provided that the Commissioner may license a person to manufacture plastic bags of not less than-

(a) 10 microns, if satisfied that such bags are for export; or

8 of 2009 s. 2

(b) 20 microns, if satisfied that such bags are for packing and packaging.

8 of 2009 s. 2 (2A) The licences required under subsection (2) shall be valid for a renewable period of one year.

Application for grant and of licence to a person to manufacture excisable goods; and the licence, 10 of Commissioner may, without assigning any reason, refuse to grant the 1980, s. 2, 8 of application.

1991, s. 6, 15 of

2003, s. 7., 4 of (2) A separate application shall be required in respect of -

2004, s.10

(a) each factory in which excisable goods are to manufactured;

(b) each class of excisable goods to be manufactured.

(3) An application under subsection (1) shall be in such form and subject to such requirements as the Commissioner may, by notice in the Gazette, prescribe.

(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 the licence.

(5) A licence under this section shall be issued to a particular person and shall be in respect of the factory and class or classes of excisable goods specified in the licence, and -

(a) the licensed factory shall not be used except for the manufacture of excisable goods specified in the licence; and

(b) only the licensee shall manufacture goods in the licensed 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.

(8) A licence issued under this subsection shall be subject to such conditions as the Commissioner may, by notice in the Gazette, prescribe.

(9) A licensee who contravenes a condition of the licence, or who allows any other person to contravene a condition of the licence, shall be guilty of an offence and liable to a fine not exceeding one million five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Packaging
alcoholic
beverages
8 of 2009 s. 3

of **91A.** (1) No person shall pack or sell an alcoholic beverage in a container the capacity of which is less than two hundred millilitres.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

Transfer
licence.

of **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, licence. to **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. of **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 to **95.**(1) The Commissioner may, for the purpose of ensuring proper for excise control, require a licensee to provide and maintain, to the

excise control. 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.

(4) A licensee shall provide and maintain at his factory such metering devices, for the purpose of accounting for excise duty, as the Commissioner may, by notice in the Gazette, prescribe in accordance with subsection (5)

(5) A notice made under subsection (4) shall-

(a) come into operation upon the expiry of six months from the date of publication in the Gazette; and

(b) be made by the Commissioner only after consideration of the relevant international standards and practice.

Licensee to **96.**(1) A licensee shall keep at his factory and in the prescribed manner keep books, etc. all records which may be required under the provisions of this Act and 15 of 2003, s. 8. shall make therein the prescribed entries relating to the manufacture, , s.12, 4 of 2004 storage and delivery of excisable goods and materials.

(1A) Every entry into a record kept pursuant to subsection (1) shall –

(a) in the case of a manual record, 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 incorrect 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; and

(b) in the case of an electronic or other form of record, be made in such a manner as may be prescribed, and shall not be altered except in the prescribed manner.

(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.

(3A) A licensee who fails to render a return in accordance with subsection (2) shall, in addition to any penalty which may be imposed under section 225A, be liable to a penalty equal to ten thousand shillings or five percent of the amount of any excise duty payable, whichever is higher.

(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' 1980, s.2. **97.**(1)A licensee shall, before commencing manufacture, make entry on entry. 10 of the prescribed form and in the prescribed manner of each of the 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 and 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,

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.

Distillers
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 distillers 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
delivery
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 other trades by distiller, 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. **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 -
of 1980, s.2.

(a) kept by a person who makes or keeps stills solely for the purpose of sale; or

(b) kept or used for experimental, analytical or scientific purposes; or

(c) 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 warehouse. **104.**(1) Spirits which have been rectified or compounded by a rectifier or may be deposited in a bonded warehouse in such quantities and under such conditions as the Commissioner may determine for exportation or in 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 of stocks **105.**(1) If, when an account is taken by a proper officer and a balance or struck of the spirits in the stock of a distiller including stocks in the in distiller's warehouse, or the stock of a person engaged in rectifying or of denaturing spirits, or in the stock of a person obtaining spirits in respect

spirits. 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, 15 of 2003, s. 9. **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:

Provided that spirits shall, where imported, be denatured prior to release from the port of importation, or, if locally manufactured, prior to release from the premises of the distiller.

(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.

Application of Part IX and section 97 and 98 to the denaturing of spirits as they do to the manufacture of excisable goods:

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 forthwith 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 provisions 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 day 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 of licensee.
110.(1) Where, upon the proper officer taking stock in the factory of a licensee (other than a distiller, denaturer 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 goods 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 to 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.

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 hour 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 -

(a) sugar;

(b) any saccharine substance, extract, or syrup;

(c) rice;

(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;

(e) any other material capable of being used in brewing except malt, corn, hops, hop concentrate or hop oil.

Notice of brewing may be required. **113.**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. **114.**(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.

(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.

Provision relating to false declaration of original gravity of beer. **115.**(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.

(2) A brewer who makes a false declaration under this section shall be guilty of an offence.

Liability of beer to excise duty. **116.**No beer may be consumed on, or removed from, a brewery or licensed premises unless duty has first been paid thereon:

Provided that the Commissioner may either specifically or generally permit -

(i) the removal of beer, in bulk, to another brewery or licensed premises for the purpose of bottling or packing;

(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.

Fortification and mixing of wine. 8 of 1991, s.7. **116A.**Subject to such conditions and limitations as may be prescribed, a wine manufacturer may-

(a) mix in his factory, spirits with wine manufactured by him in a proportion not exceeding ten litres of proof spirit 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 manufacture in his factory, mix wine made by him with imported wine on which the full duties of customs have been paid.

Excise Stamps **116(B)** (1) The Minister may, by notice in the Gazette, specify the excisable goods to which the requirement for the affixing of excise stamps under this section applies.

(2) The Commissioner shall, by notice in the Gazette, specify the types and descriptions of the excise stamps to be affixed on the goods specified under subsection (1).

(3) No person shall-

(a) import any goods specified in accordance with subsection (2) unless such person is registered with Commissioner; or

(b) offer such goods for sale or free distribution or use them for any other purpose unless there is affixed on the goods the prescribed excise stamps.

(4) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be

liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

- (5) A licensee or importer who is convicted of an offence under subsection (4) shall, in addition to the penalty prescribed under that subsection, be liable to have his licence cancelled, or registration under this section revoked, as the case may be.

PART XI – DUTIES

General Provisions

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, 7 of 2002, s.5, 15 of 2003, s. 10.

***117.**(1) Subject to 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 and services specified in the second column of the Fifth Schedule, excise duties at the respective rates specific in the Schedule:

(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;

(g) in respect of gaming takings, duty in accordance with the provisions of section 126A;

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, or 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 or 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 conditions attached thereto as set out, in that Part, be charged duty at the rates specified therein.

*The Schedules referred to in this section are published in a separate booklet.

Arrangements for bilateral relief from duty. **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 and the notice shall, subject to the provisions of this section, have effect according to its tenor.

Variation of rates of duty. ***119.**(1) Subject to subsection (1A) the Minister may, 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:
 of 1992, s. 9, 13
 of 1995, s. 36, 2
 of 1997, s.2, 7
 of 2002, s.6. 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 one hundred 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 subsection (1), the Minister may, by order in the Gazette, decrease the rate 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), (1A) 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) (1A) 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.

* The Schedules referred to in this section are published in a separate booklet.

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 payable, may add the difference caused by the alteration to the agreed price;

(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;

(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.

Effect of obligation to pay duty. of **121.** Where an obligation has been incurred, whether by bond or otherwise, for the payment of duty, then the obligation shall be deemed to be an obligation to pay all duties which are or may become payable or recoverable under the provisions of this Act.

Recovery of duty. of **122.** 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.

Effect of alteration in classification of goods. 10 of 1987, s. 5. of **123.** 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.

Time of entry for home use determines rate of duty. 8 of 1991, s.10. of **124.**(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:

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.

(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:

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 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 dumping and subsidisation of goods. 5 of 1998, s.5, 7 of 2002, s.7. **125.**(1) The Minister shall, by notice in the Gazette, establish an advisory committee comprising not more than ten 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, prescribe 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 subsidisation:

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

Imposition of anti-dumping duty and countervailing duty **125A.**(1) Where upon 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 being dumped; or

(b) that some government or 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 chargeable 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 subsidy found to exist; and

(b) no duty shall be imposed under this section by 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 in Kenya.

(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 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 126.(1) For the purposes of section 125, imported goods<X>DS
subsidy 8 of shall be regarded as having been dumped -
defined. 8 of
1997, s.7

(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 products 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 a subsidy are reference 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) a direct transfer of funds such as grant, a loan or equity infusions;

(b) an indirect transfer of funds such as a loan guarantee;

(c) provision of goods or services other than general infrastructure, or purchase 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.

(3) In section 125, the word "injury" means material injury, threat of material injury or material retardation.

. 8 of 2009 s. 4

126A. Repealed by Finance Act 2009

Value of Imported Goods, Excisable Goods and Goods for Export

Determination of value of imported goods. 8 of 1985, s.3, 4 of 1993, 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 subsections (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 acceptance, and in default, a new assessment of the value shall be determined in accordance with subsection (3) and (4).

Determination of value of goods for export. 8 of 1985, s.3, 4 of 1993, s.12, 5 of 1998, s.7

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

goods for
 export. 10 of (a) the cost of the goods to the buyer outside Kenya;
 1986, s.6, 9 of
 1992,s. 10, 4 of (b) packing charges;
 1993, s.13, 5 of
 1998, s.8 (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 on 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
 acceptance, and in default, a new assessment of the value shall be
 redetermined in accordance with subsections (3) and (4).

Appraisal of **127B.** (1) Notwithstanding any other provisions of this Act, where the

value of proper officer or any other person authorized by the Commissioner has imported goods, reason to believe that the value of the imported goods or goods for etc. 9 of 2000, export or goods for re-exportation is below or above the transaction s. 6, 6 of 2001, value, the proper officer or authorized person shall appraise or cause the s. 4. goods to be appraised in accordance with the methods set out in the Seventh Schedule<A

(2) A certificate of the appraised or adjusted value given under the hand of the proper officer or other person 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 person authorized by the Commissioner under the foregoing subsections, the importer or other person liable for the payment of duty may within thirty days from the day he is notified of the decision, appeal to the Tribunal established under section 127E.

(5) The Tribunal shall consider and determine every appeal made under subsection (4) and shall cause the 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 Agreements on Tariffs and trade on Customs Valuation signed in Marrakesh, Morocco, on the 15th, April, 1994.

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

purposes. 8 of

1991, s.11, 4 of (a) the value of such goods ascertained for the purpose of import duty;

1993, s.14, 6 of and

1994, s. 4, 8 of

1996, s.4, 6 of (b) the amount of import duty, suspended duty and dumping duty if any.

2001, s. 5, 7 of

2002, s.8, 15 of (2) The value of locally manufactured goods for purposes of levying *ad*

2003, s. 12, *valorem* excise duty shall be the ex-factory selling price.

s.13, 4 of 2004

(3) For the purposes of subsection (2), the ex-factory selling price shall not include -

(a) value added tax;

(b) Deleted by s.13, 4 of 2004

(c) cost of excise stamps.

(d) the cost of any returnable package, box, bottle or container.

(4) *(Deleted by 15 of 2003, s. 12.)*

Pre-shipment **127D.** (1) Notwithstanding any other provisions of this Act, the inspection of Minister may, by notice in the Gazette, prescribe certain imported goods which shall be subject to pre-shipment inspection.

8 of 1996, s.4,

11 of 2000, (2) The Commissioner may appoint any person for the purpose of conducting pre-shipment inspection of the goods prescribed under s.6A,

subsection (1).

(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.

(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.

(4A) Goods in respect of which a certificate of inspection has been issued under subsection (4) shall not be subject to any further inspection except by a proper officer.

(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 under this section.

(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.

Establishment of Appeals Tribunal. 9 of 2000, s.7. **127E.**(1) The Minister shall, by order published in the Gazette, establish an Appeals Tribunal for the purposes of hearing appeals on disputes arising from the decisions of the Commissioner or a person authorised by him, or of the proper officer.

(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.

(2A) The members of the Tribunal shall be entitled to receive such subsistence and traveling allowances as the Minister may determine.

(3) The quorum for a meeting of the Tribunal shall be the chairman and two other members.

(3A) where a dispute arises regarding any decision of the Commissioner or other person authorized by him or the proper officer, the person aggrieved thereby may, within thirty days from the day he is notified of the decision, appeal to the Tribunal.

(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.

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

Procedure for appeals. 9 of 2000, s.7, 6 of 2001, s. 6. Cap. 40. Cap. 21. **127F.** (1) A person shall, before filing an appeal with the Tribunal, deposit with the Commissioner the full duty assessed under section 127B and in the case of any other dispute, makes all returns of duty, where applicable, as required and pays the amount of duty shown thereon as being due and payable.

(2) Any duty deposited with the Commissioner under subsection (1) shall, where the decision of the Tribunal of the High Court, as the case may be, is in favour of the aggrieved person, 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 reason to do so, it may receive evidence 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 fail 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.

(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 filed 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.

(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 amounts payable under this Act, the court is satisfied that any party to the suit has appealed 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.

Excisable value of services. 7 of 2002, s.9. **127G.** The value of services for the purposes of levying excise duty shall be the price paid or payable by the final consumer of such services in an open market transaction between buyer and seller independent of each other.

Computation of Duty: General

Adjustment for fractions of a shilling. 8 of 1991, s.12, 7 of 2002, s.10. **128.** Notwithstanding section 117 (1), where the total amount of duty computed with reference to any one customs document -
(a) is one hundred shillings or less, no import duty, suspended duty or dumping duty shall be charged;

(b) *(Deleted by 7 of 2002, s.10).*

(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 that package - **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 the package -

certain cases.

(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, the goods shall be liable to duty according to the gross weight of the package and its contents.

Duty computed on quantity in certain cases. **130.** Where goods liable to a specific duty are imported in a package and on reputed the goods are intended for sale, or are normally sold retail, in that quantity in 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 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

(b) 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 for 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 packages 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; or

(b) 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, 8 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 to a rectifier's warehouse, the duty shall become due and shall be charged at the rate in force when the spirits liable to the duty are delivered from the rectifier's or compounder's warehouse, and the duty shall be paid by the rectifier or compounder, or secured to the satisfaction of the proper officer, on its becoming due.

(3) The Commissioner may permit the payment of duty under subsections (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 a fermented liquor, the excise duty on spirits shall, in addition to being charged on the 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 of 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.

Excise stamps **136A.** Every bottle or other container of wines or spirits manufactured on wines and in or imported into Kenya shall have affixed on it, in the prescribed spirits. 10 of manner, an excised stamp issued under the authority of the 2006, s. 2 Commissioner.

Payment of Duty on Excisable Goods other than Spirits

Time of delivery **137.**(1) The duty on locally manufactured excisable goods other than spirits shall become due and shall be charged at the rate in force when determines rate the goods liable to duty are delivered from the stock room of the of excise duty, licensee; and the duty shall, subject to any remission or rebate thereof etc. 8 of 1991, which may be granted in accordance with the provisions of this Act, be s. 13, 8 of 1996, paid by the licensee on its becoming due: s. 5A, 7 of 2002, s.11.

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.

(2) Duty on usage of mobile cellular phone services shall be charged at the rate in force when the service is purchased by the consumer and shall be collected and paid by the mobile cellular phone service providers licensed by the Communications Commission of Kenya.

(3) In this section, "Communications Commission of Kenya" means the Commission by that name established under the Kenya Communications Act, 1998.

Power of Minister **138.**(1) Subject to subsection (2) and (5), the Minister may, by order in to the Gazette, remit in whole or in part duty payable by any person on refund of duties. goods, aircraft, vessels or vehicles imported by that person if he is

9 of 1992, s. 10, satisfied that it is in the public interest to do so.
 4 of 1993, s. 15,
 6 of 1994, s. 5, (2) Remission under subsection (1) shall only be in respect of -
 13 of 1995, s.
 37, 5 of 1998, (a)*Deleted* by 4 of 1993, s.15.
 s.9, 4 of 1999,
 s.11, 9 of 2000, (b)*Deleted* by 4 of 1993, s.15.
 s.8, 6 of 2001, s.
 7, 7 of 2002, (c) such other goods, (excluding passenger motor vehicles of a seating
 s.12 15 of 2003, capacity of less than twenty-six persons, building materials, audio and
 s. 13, s.14, 4 of audio-visual electronic equipment, spare parts, office furniture,
 2004,s.13, 15 of stationery, textiles, new and used clothing and footwear, maize, wheat,
 2003 sugar, milk, rice, edible vegetable fats and oils) imported by any person
 for donation to non-profit making organizations of institutions
 approved by the Government, for their official use or free distribution
 to poor and needy persons, or for use in medical treatment, educational,
 religious or rehabilitation work:

Provided that remission under this paragraph may be granted in respect
 of –

(i) all goods (excluding passenger motor vehicles of a seating capacity
 of less than fourteen persons, building materials, audio and audio-visual
 electronic equipment, spare parts, officer furniture and other office
 equipment and stationery) donated or purchased for donation by any
 person to registered homes for poor and needy persons, subject to
 approval by the Minister or

(ii) maize, wheat, sugar, milk, edible vegetable fats and oils, rice,
 textiles, new and used clothing and footwear imported during periods
 of civil strife, national calamity or disaster declared under any law for
 the time being force, or where they are intended for use in officially
 recognized refugee camps in Kenya.

(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.

Provided that an exemption under this paragraph shall not apply to spare parts, equipment, machinery, materials or motor vehicles in respect of any agreement between the Government and an aid agency entered into after the 1st July, 2003.

(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 section; 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.

Remission of 139.(1) Subject to the provisions of this Act, the Commissioner may excise duty. 10 remit any excise duty payable in respect of goods where he is satisfied - of 1980, s. 2, 8 of 1985,s.4,8 of (a) that a person is, in accordance with the provisions of this Act, 1991 ,s. 15, 9 of entitled to remission; 1992, s.12, 8 of 1997, s.7, 9 of (b) that the goods were destroyed by accidental fire, or other 2000, s.9. Cap. unavoidable cause, while in a building, room or place which has been 253. Cap. 366. entered in accordance with this Act and which is in the factory in which Cap. 244.,s.15, they were manufactured; 4 of 2004

(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

(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 (3) and (4) of item 7 of Part A of the Third Schedule;

(f) that in the case of spirits -

(i) deleted (*by Finance Act 2009*)

(ii) deleted (*by Finance Act 2009*)

(iii) deleted (*by Finance Act 2009*)

(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 -

(A) a medical practitioner or a dentist registered under the Medical Practitioners and Dentists Act;

(B) a registered veterinary surgeon within the meaning of the Veterinary Surgeons Act;

(C) a registered pharmacist within the meaning of the Pharmacy and Poisons Act;

(D) a chemist, holding qualifications approved by the Commissioner, who is in charge of a chemical laboratory approved by the Commissioner;

- (E) the curator of a public museum;
- (F) the principal of an educational institution approved by the Commissioner;
- (G) any other person approved for the purpose by the Commissioner by notice in the Gazette;
- (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.
- (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 a hydrocarbon warehouse for the manufacture of gasohol.
- (g) that in case of petroleum oils, they were refined in Kenya:

Provided that remission under this paragraph shall be granted subject to such limit as the Minister may by notice in the Gazette, specify.

(h) that in the case of alcoholic beverages, remission shall be granted to such extent as the Minister may, by notice in the Gazette, specify.

(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 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.

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.

Exemption from certain duties on goods entered for exportation, etc. 4 of 1993, s. 16, 6 of 1994, s.

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

6, 8 of 1996, s. (b) used as stores for aircraft or vessels; or
 6, 9 of 2000,
 s.10, 6 of 2001, (c) used in the blending of lubricating base oils; or
 s. 8, 7 of 2002,
 s.13. Cap. 517. (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 any regulations made thereunder, raw
 materials imported for the manufacture of -

(a) goods for export;

(b) goods for home use as may be approved by the Commissioner;

shall be exempt from duty where the users and the approved quantity of
 such raw materials have been gazetted:

Provided that in the case of refined sugar for industrial use, used in the
 manufacture of goods for home use, twenty-five per centum of the duty
 shall be payable.

(3) *Deleted by 2 of 2002, Sch.*

(4) Any person who diverts any goods manufactured for export for
 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 **142.**(1) Subject to the provisions of this Act, where goods which are
 certain duties of liable to duty have been exported from and are subsequently re-
 certain re- imported into Kenya then, if the Commissioner is satisfied -
 imports. 8 of

1991, s.18. (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, 6 of 2001, s. 9.

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 for the importation; and the proper officer shall not give permission -

(a) unless he is satisfied that the goods are imported for a temporary use or purpose only;

(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 action 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, then 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.

Exemption of **143A.** Subject to the provisions of this Act, water, other than water excise duty on which is bottled or otherwise packaged for sale, shall be exempt from water excise duty.

Remission of **144.** Where goods are lost or destroyed by accident either - certain duties on

lost
destroyed
goods.

or

(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

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 shall be refunded, subject to such terms and conditions as may be prescribed in the order or in regulations.

Refund of certain duties to privileged institutions and personnel, etc. 8 of 1991, s. 20.

(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 ordinarily 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 nation or a consular officer who is a permanent and pensionable member of the foreign service of another country, for its personal use, and that other country accords a similar privilege to permanent members of a Kenya diplomatic nation or a

permanent Kenya consular officer;

(iii) one of the international organizations named in the Ninth Schedule for his 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 **146.**(1) Subject to this section and any regulations, the Commissioner may grant a refund of certain duties on goods which have been damaged or pillaged, etc., during the voyage or damaged or destroyed while subject to customs control; s. 10.

(b) of any duty which has been paid in error;

(c) Deleted by 6 of 2001, s. 10

(d) of any excise duty which he is satisfied has been paid in respect of goods in relation to which, had the duty not been paid, a remission or rebate thereof would have been granted in accordance with this Act.

(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 **147.**(1) Subject to section 146 (2) and to such conditions as the

certain duties on Commissioner may see fit to impose, where it is shown to the
 returned or satisfaction of the Commissioner -
 destroyed

goods. 10 of (a) that goods were imported in pursuance of a contract of sale and that
 1986, s.8, 8 of the description, quality, state or condition of the goods was not in
 1991, s. 20. 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
 certain duties on goods are delivered out of customs control, then, subject to the
 damaged goods. 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.

Remission or **148A.** Where a person has sold excisable goods or services and has
 refund of duty accounted for and paid excise duty on that sale but has not received any
 on bad debts payment from the purchaser, he may, after a period of three years from
 the date of that sale, or where that person has become legally insolvent,
 apply to the Commissioner for a refund or remission of the excise duty
 involved, and, subject to the regulations, the Commissioner may refund

or remit the excise duty.

Provided that no application for a refund or remission shall be made under this section after the expiry of five years from the date of sale.

Rebate of excise duty. 8 of 1991, s. 23, s.16, 4 of 2004 **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 provisions 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.

(3) A person who -

(a) makes a fraudulent claim for rebate of duty; or

(b) with intent to evade payment of duty, gives false information or makes a false statement in relation to any claim for rebate,

shall be guilty of an offence and liable to a fine not exceeding the higher of one million, five hundred thousand shillings or three times the amount of the claim, or to imprisonment for a term not exceeding three years, or to both.

Rebate or refund on converted excisable goods or plastic bags for packing.

149A (1) Where excisable goods on which duty has been paid are converted into other excisable goods liable to duty, whether specific or *ad valorem*, the excise manufacturer shall be entitled to a rebate of the excise duty previously paid on the converted excisable goods.

(2) Where excise duty has been paid on plastic bags which have subsequently been used for packing by local manufacturer, the excise duty previously paid shall, on application by the manufacturer, be refunded by the Commissioner.

(3) Where excise duty has been paid on spirits which have subsequently been used for manufacturing unexcisable goods, the excise duty previously paid shall, on application by the manufacturer, be refunded by the Commissioner.

150. *Repealed by 8 of 1991, s. 24.*

Drawback of certain duties on 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

1991, s.25. 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 the goods on the 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 the 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.

Penalty for fraudulent claims. **153A.** (1) Any person who makes a fraudulent claim for refund or rebate of duty shall be guilty of an offence and liable to pay a penalty of an amount equal to two times the amount of the claim.
10 of 2006, s. 3 (2) The penalty under this section shall not be part of the fine imposed by a court in a trial for fraudulent claims under this Act.

Miscellaneous Provisions

Derelict goods, etc., liable to duty. **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. **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, the goods 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 of 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 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, 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 refund. 14 of 1982, s.5. **158.**(1) Where duty has been short levied or erroneously refunded, then the 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 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 by that person or his agent shall not be accepted by the customs, or may revoke or suspend that person's until the duty short levied or erroneously refunded been paid or repaid.

Duties not to be abated on conviction. 8 of 1989, s. 4. **158A.**Notwithstanding anything contained in this Act, the amount of duty or penalty payable under this Act shall not be abated by reason only of the conviction of the person liable for the payment thereof for an offence under this Act.

Commissioner may refrain from recovering of duty in certain cases. 9 of 1992, s. 13, 8 of 1997, **158B.**(1) Notwithstanding the provisions of this Act, in any case where the Commissioner is of the opinion that he should refrain from recovery of duty or penalty or both, from any person by reason of impossibility or undue difficulty or the expense of the recovery of the duty or penalty or both, or due to any other reasonable cause, the Commissioner may refrain

s. 8, 11 of 2000, from recovery of the duty or penalty or both and thereupon liability to the duty or penalty or both shall be deemed to be extinguished and shall make quarterly returns to the Minister of all the amounts of duties or penalties not recovered pursuant to this subsection:

Provided that in any case where the amount of duty or penalty exceeds five hundred thousand shillings, the Commissioner shall first seek the prior written approval of the Minister.

(2) Where the Commissioner has decided to refrain from recovering duty or penalty or both under subsection (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 case has been referred to him, and where he considers it appropriate, the Minister may, in writing, direct 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.

158C. Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering any penalty, fine on any goods imported into the country before the 11th June, 2004 or excisable goods manufactured and sold in the country before the 30th April, 2004, where-

- (a) the duties are paid; and
- (b) all returns, or amended returns, which should have been submitted in respect of the goods, are submitted,

on or before 31st December, 2004:

Provided that this section shall not apply in respect off duty if the person who should have paid the duty –

- (i) has been assessed in respect of the duty or any matter relating to the duty; or
- (ii) is under audit or investigation in respect of the duty or any matter relating to the duty.

Disputes. 8 of **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 1991, s. 28.

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.

159A (1) Subject to such conditions as the Commissioner may prescribe, excise duty formalities or procedures under this Act may be carried out by use of information technology.

- (2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify-
- (a) the excise duty formalities and procedures which may be carried out by use of information technology; and
 - (b) the persons authorized to carry out such formalities or procedures by use of information technology.

159B (1) No person shall access, transmit to, or receive information from a tax computerized system unless the person is registered as a user

of such system under this section.

(2) A person seeking registration under this section shall apply to the Commissioner

(3) The commissioner shall consider every application under subsection (2) and may, if satisfied that the applicant meets the prescribed requirements, register the applicant as a user of a tax computerized system.

159C. Whether, at any time, the Commissioner is satisfied that a person who is registered as a user of a tax computerized system under section 159B-

- (a) has failed to comply with any of the conditions imposed by the Commissioner under that Section; or
- (b) has failed to comply with, or has acted in contravention of, any prescribed requirements; or
- (c) has been convicted of an offence under this act relating to improper access to or interference with a tax computerized system,

the commissioner may cancel the registration of the user.

159C (1) A person commits an offence if the person-

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized system; or
- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system or a purpose which is not authorized; or
- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information.

(2) a person who commits an offence under subsection (1) shall be liable, on conviction-

(a) in the case of an individual, to a fine not exceeding four hundred thousand shillings, or to imprisonment for a term not exceeding two year, or to both; or

(b) in the case of a body corporate, to a fine not exceeding one

million shillings.

159D (1) A person commits an offence if the person-

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized system; or
- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system for a purpose which is not authorized; or
- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction-

- (a) in the case of an individual, to a fine not exceeding four hundred thousand shillings; or to imprisonment for a term not exceeding two years, or to both; or
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

159E. A person commits an offence if the person knowingly

- (a) falsifies any record or information stored in any tax computerized system; or
- (b) damages or impairs any tax computerized system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information emanating from a tax computerized system is held or stored, otherwise than with the permission of the Commissioner,

and shall be liable, on conviction, to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

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.

(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.

General provisions relating to giving security. **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 -
 of (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.

Provisions relating to sureties.

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 accordingly 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.

Enforcement of bond. 8 of 1983, s. 4, 8 of 1997, s. 9, 5 of 1998, s. 10, 5 of 1998.

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 fourteen days' 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 to 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

Authority of **164.**(1) Where under the provisions of this Act the owner of goods is agents. 10 of required or authorized to perform any act, then that act, unless the 1990, s.7. contrary appears, may be performed on his behalf by an authorized agent.

(2) A person shall not be the duly authorized agent of an owner unless-

(a) the person is exclusively in the employment of the owner; or

(b) the person is a customs or excise agent duly licensed as such in accordance with any regulations, and, in either case the person is authorized in writing by the owner, either generally or in relation to a particular act, to perform the act on behalf of the owner.

(3) The proper officer may require from a person purporting to be the duly authorized agent of an owner the production of his written authority and in default of the production of that authority the proper officer may refuse to recognize the person as a duly authorized agent.

Liability of **165.**A duly authorized agent who performs an act on behalf of the duly authorized owner of any goods shall, for the purposes of this Act, be deemed to be agent. 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 **166.**An owner of goods, who authorizes an agent to act for him in owner for acts relation to those goods for any of the purposes of this Act shall be liable of duly for the acts and declarations of the duly authorized agent and may authorized accordingly be prosecuted for an offence committed by the agent in agent. 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 **166A.**(1) The Commissioner may, by written notice addressed to any appointed by person (in this subsection called the agent), appoint him to be the agent the of another person (in this subsection called the principal) for the Commissioner. purposes of collecting duty due under this Act from the principal where

14 of 1982, s.7, the Commissioner is satisfied that the agent -
6 of 1994, s. 8.
6 of 2005, s.2

- (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 of 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, within seven working days, 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 the 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.

(8) 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.

166C (1) Where the Commissioner has reasonable cause to believe that a person –

Preservation of funds

(a) has manufactured excisable goods on which tax has not been charged; or

(b) has collected duty which has not been accounted for; and

(c) is likely to frustrate the recovery of duty if information of the Commissioner's suspicion under this subsection is disclosed to him,

the Commissioner may make an *ex-parte* application to the High Court, in this section referred to as "the Court, and the Court may issue an order to any person or institution holding funds belonging to the person, prohibiting the transfer, withdrawal or disposal of, or any other involving such funds.

(2) An order under subsection (1) shall have effect for 30 days and may be extended by the Court on application by the Commissioner.

(3) A person whose funds are the subject of an order under this section may, within 15 days of being served with the order, apply to the Court to discharge or vary the order or dismiss the application.

(4) Where the Court has issued an order under this section, the Commissioner shall, within a period of 30 days of the order, determine the excise duty due and payable, issue a notice of assessment and commence recovery of such duty in accordance with the provisions of this Act.

(5) Upon issuance of a notice of assessment under subsection (4), the order shall automatically expire.

(6) A person served with an order under this section who, in any way, interferes with the funds to which it relates commits an offence.

(7) A person who preserves funds or any account pursuant to a Court order under this section, shall for all purposes, be deemed to have acted within the authority thereof and such person and all other persons concerned shall be indemnified in respect of the actions taken in connection therewith, against all proceedings, civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

Power to require vessels, etc. to bring to 6 of 2001, s. 11. to **167.**(1) The master of a vessel within Kenya shall bring his vessel to for require vessels, boarding on being signaled so to do by a vessel in the service of the etc. to bring to. 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 signaled 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. to **168.**(1) The master of an aircraft or vessel within or over Kenya shall on require vessel, being required so to do by the proper officer, depart from Kenya within etc., to depart. 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 **169.**(1) An officer while on duty may enter upon and patrol and pass freely and moor freely along any premises, other than a dwelling-house or a building, vessels, etc.

(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.

(3) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

Power to board **170.**(1) An officer may, in the course of his duty, stop, board and search vessel, etc., and an aircraft, vessel or vehicle within Kenya and may examine, lock up, search. 7 of seal, mark or otherwise secure any goods on the aircraft, vessel or 1988, s. 13, 6 of vehicle, and for the purposes of the examination or security of any 2001, s. 12. 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 boarded under this section, goods are found therein and on the aircraft, vessel or vehicle being subsequently boarded, 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.

Persons

171.A person entering or leaving Kenya shall answer questions which

entering or the proper officer may put to him with respect to his baggage and any leaving Kenya article contained therein or carried with him.

to answer

questions concerning baggage.

Power to search persons. **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 cognizable to the police under any other law, for the purposes of this section the expression "officer" includes a police officer.

Power to search **174.**(1) A proper officer may in the course of his duty or if he has

premises. 8 of 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 question 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, buildings, otherwise secure -
etc. 6 of 1994,
s. 9.

175.(1) An officer may, in the course of his duty, lock up, seal, mark or

(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) plant 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. 7 of 2002, s.14.

to **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, whether in written form or in micro-film,

magnetic tape or any other form of mechanical or electronic data retrieval mechanism 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 -
of (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.

Offence to warn offender. **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,

1980, s. 2, 6 of another person engage in the commission of an offence under this Act, 2001, s. 13. 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 **183.**A person, not being an officer, who takes or assumes the name, assume designation, character or appearance of an officer for the purpose of - character of officer. 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.

Master of **184.**A master of an aircraft or vessel, and a person in charge of a vessel, etc., vehicle, which is within Kenya and - used for smuggling or (a) which has a secret or disguised place adapted for concealing goods, evasion guilty or a device adapted for smuggling goods; or of offence. 6 of 2001, s. 14. (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 **185.**(1) A person who -
 respect of
 prohibited, (a) imports or carries coastwise -
 restricted and
 uncustomed (i) prohibited goods, whether or not those goods are unloaded; or
 goods. 10 of
 1980, s. 2, 5 of (ii) restricted goods contrary to any conditions regulating the
 1998, s11. 5 of importation or carriage coastwise of those goods, whether or not those
 1998,s. 11, 6 of goods are unloaded;
 2001, s. 15.

(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 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 a fine equal to three times the amount of duty and any other taxes payable on the goods in respect of which the offence is 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 the storage or sale of unaccustomed goods shall be guilty of an offence and liable to a fine not exceeding one million shillings.

Offence
import
export
concealed
goods.

to **186.**A person who imports or exports goods -
or

(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
make or use
false
documents. 10
of 1980, s. 2, 6
of 2001, s. 16.

to **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 any way 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. to **188.**A person who, when required in accordance with this Act -
to
(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 **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

property. 6 of shall be guilty of an offence and liable to a fine not exceeding one hundred and twenty thousand shillings.

Offences in 191.(1) A person who -
 connexion with

excisable (a) conceals in or, without the consent of the proper officer, removes goods. 10 of from a distillery any wort, wash, low wines, feints or spirits;

1980, s. 2, 6 of

2001, s. 18. (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

(f) 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.

Uncustomed goods found to be reported. 6 of 2001, s. 19. **192.**A person who, on finding uncustomed goods on land or floating goods upon 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. 7 of 2002, s.15 **194.**(1)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.

(2) Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was acting or purporting to act in that capacity, shall also be guilty of the offence unless he proves that the offence was committed without his consent or knowledge and that he exercised the due diligence to prevent the commission of the offence that he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

Sale of adulterated petroleum products prohibited. 11 of 2000, s. 13, 7 of 2002, s.16, s.18, 4 of 2004 **194A.**(1) No person shall -
 (a) mix, or cause to be mixed, any refined petroleum products; or]
 (b) possess or offer for sale, any mixture of refined petroleum products, or any refined petroleum product which does not meet the Kenya Standard declared under the Standards Act.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and the products in respect of which the offence is committed shall be liable to forfeiture.

General penalty. 8 of 1997, s. 10, 8 of 1997, s. 10, 6 of 2001, s. 20. **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 five 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.

Goods liable to forfeiture. **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.

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.

Provision relating to goods liable to forfeiture. **198.**(1) Where goods are liable to forfeiture under this Act, then the 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 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
seizure.

on **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 XVII, 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 XVI I 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.

Effects of **201.**(1) Where a person is prosecuted for an offence under this Act and conviction, etc., any thing is liable to forfeiture by reason of the commission of that offence, the conviction of that person of that offence shall, without to forfeiture 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. 202. (1) Subject to subsection (2), where the owner of any thing seized claims it by notice to the Commissioner pursuant to section 200(4), the owner may, within two months of the date of the notice, institute proceedings for recovery of the thing seized:

Provided that where no proceedings are instituted under this subsection within the period specified, the thing seized shall be condemned,

(2) Where –

(a) the owner of any thing seized is charged with an offence by reason of which the thing is seized; and

(b) the charges preferred are subsequently withdrawn for any reason,

The period specified in subsection (1) shall begin to run on the date such charges are withdrawn.

(3) where proceedings are instituted under subsection (1), any thing seized shall be condemned if –

(a) the court is satisfied that the thing –

(i) is liable to forfeiture under this Act; or

(ii) comprises prohibited or restricted goods which have been imported or carried coastwise or attempted to be exported in contravention of any law; or

(b) the court is not satisfied that the claimant is the owner of, or is entitled to possession of, the thing.

(4) If anything seized is not condemned under subsection (3), the court shall release it to the owner subject to the payment of any applicable duty.

Provision relating to condemnation. 203.(1) Where anything has been seized under this Act provisions 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 thing 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. **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 such thing has been condemned, direct that it be released to the applicant upon such terms and 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

Proceedings triable in subordinate court of first class. Cap. 75. **205.**(1) Without prejudice to the powers of any other court of competent jurisdiction, a prosecution for an offence under this Act may be heard and determined before a subordinate court of the first class; and 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.

(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

Commissioner. 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 proceedings. of **207.** Proceedings for an offence under this Act may be commenced, and 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. **208.**In proceedings under this Act -

(a) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;

(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;

(c) the averment by the Commissioner-

(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;

(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;

(iii) that any act was done within the limits of a port or at, in or over any part of Kenya;

(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:

(v) that the Commissioner has directed or requested proceedings under this Act to be instituted, shall be *prima facie* evidence of that fact;

(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;

(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, organization 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 Acts 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 for 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. of **213.** Any officer may appear and prosecute in a prosecution before a subordinate court for an offence under this Act.

PART XVII-SETTLEMENT OF CASES BY THE COMMISSIONER

Power of Commissioner to compound offence by agreement. 10 of 1980, s. 2. of **214.**(1) The Commissioner may, where he is satisfied that a person has committed an offence under this Act in respect of which 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

(c) 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 XVII-SETTLEMENT OF CASES BY THE COMMISSIONER

Power of Commissioner to compound offence by agreement. 10 of 1980, s. 2. **214.**(1) The Commissioner may, where he is satisfied that a person has committed an offence under this Act in respect of which 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

(c) 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.

Provisions related 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 related to all documents. 4 of 2004, s. 21

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.

(3A) Where a person is required under this Act to keep a document or record, the person shall retain the document or record for at least seven years after the document or record was created.

(3B) Where, under the provisions of this Act, any accounts, books of account, or other records are required to be kept, such accounts, books or records may be kept in written form or in micro-film, magnetic tape or in

any other form of mechanical or electronic data retrieval mechanism.

(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. 6 of 1994, s. 10.

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 -

(a) to produce all books and documents relating in anyway 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 all 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.

218A. Where, in the opinion of the Commissioner, a person had failed to pay duty which is payable by him by reason of –

(a) his failure to keep proper books of account, records or documents, as required under this Act, or the incorrectness or inadequacy of those books of account, records or documents; or

(b) his failure to make any return required under this Act, or delay in making such return, or the inadequacy or incorrectness of any such return,

the Commissioner may, on such evidence as may be unavailable to him, and according to his own judgment, determine the amount of the duty, if any, which is payable.

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.

Provisions relating to declaration 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 entry. **221.** Where a person requires a receipt for money paid and brought on 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 be 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 herein; 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, 6 of 2001, s. 21.

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.

Provided that the penalty chargeable under this subsection shall not exceed one hundred percent of the duty originally due.

(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.

(4) Notwithstanding any other provision of this section, a person from whom a penalty under subsection (1) is due may apply in writing to the Commissioner for remission of the penalty.

(5) Upon receipt of an application under subsection (4), the Commissioner shall where the applicant has paid the principal duty in full, suspend the charging of the penalty pending the determination of the application.

(6) The Commissioner may, after consideration of an application under subsection (4), remit the whole or part of the penalty due if satisfied that such remission is justified, and shall make quarterly reports of all remissions granted under this subsection to the Minister.

Provided that where the amount of the penalty exceeds one million five hundred thousand shillings, the remission shall be subject to the approval of the Minister.

(7) Where remission under subsection (6) is not granted, or is granted in respect of only part of the penalty, the balance of the penalty shall become due and payable within ninety days of the determination of the application.

(8) If the balance of a penalty payable under subsection (7) remains unpaid after the expiry of the specified period, a surcharge of two percent per month or part thereof, of the unpaid amount shall forthwith be due and payable.

Security on **225B.**(1) Where a person, being the owner of land or buildings situated in property of Kenya, fails to pay any duty or other sum of money due and payable unpaid duty, under this Act, the Commissioner may by notice in writing inform that etc. 14 of 1982 person of his intention to apply to the Registrar of Lands for the land or s. 8. 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. **226.**The Commissioner may award to any person -
13 of 1979, s.
2, 8 of (a) who has arrested or has assisted in the arrest of any other person under 1997,s.11. 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 XVII 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.

227A. (1) No officer or employee of the Kenya Revenue Authority may, by him or through an agent, purchase any goods offered for sale in an auction held under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Licensing of
aircraft, vessels
and vehicles
conveying goods
subject to
customs control.
6 of 1994, s.11.

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 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 (1) 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 water-ways.

Provisions relating
to commissioned
vessels and
aircraft.

230.Where an aircraft or vessel under commission 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 boarded 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 licence 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, 8 of 1997, s. 12, 11 of 2000, s. 14, 6 of 2001, s. 22, 8 of 1997, s.12 **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 in Kenya;

(r) the implementation of Kenya's obligation under any international treaty or agreement relating to the provisions of this 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 is the higher, or to imprisonment for a term not exceeding three years, or to both.

Saving. 14 of 1982, s. 9. E.A. Cap. 27. E.A. Cap. 28.

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.

*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).

FIRST SCHEDULE*Import Duties.***SECOND SCHEDULE***Suspended Duties.*

The above two Schedules are not covered in this book

THIRD SCHEDULE*(Exemption from Import Duty, Suspended Duty and Dumping Duty)***SCHEDULE 3 THIRD SCHEDULE TO THE CUSTOMS & EXCISE ACT Cap.472****Exemptions From Duty**

In accordance with section 117(2) of the Customs and Excise Act no duty shall be charged on -

(i) The goods listed in Part A of the Third Schedule, when imported, or 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

(ii) The goods listed in Part B of the Third Schedule when imported or purchased before clearance through the customs, in accordance with any condition attached thereto as set out in that Part;

(iii) In terms of section 117(3) of the Customs and Excise Act, 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 conditions attached thereto as set out in that Part, shall be charged duty at the rates specified therein.

PART A - SPECIAL EXEMPTIONS**GOODS IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH THE CUSTOMS BY OR ON BEHALF OF PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS.**

1. The President Goods for use by the President.
 2. The Kenya Armed Forces All goods, including materials, supplies, equipment, machinery and motor vehicles for the official use of the Kenya Armed Forces.

3. Deleted.

F.A. 1991 No.8 of
1991

4. Deleted.

F.A. 1991 No.8 of
1991

5. Deleted.

F.A. 1991 No.8 of
1991

6. Commonwealth and Other Governments

(1) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on

board such vessel.

(2) Goods for the use of any of the Armed Forces of any allied power.

7. Diplomatic Privileges

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or purchased by them prior to clearance through customs within ninety days of their first arrival in Kenya, or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the Treasury in specific cases, where the entitled personnel have not been granted an exemption under item 7(3) of Part A, or item 8(3) of Part B of this Schedule:

Provided that this exemption shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in Kenya while in execution of another aid project, and provided that each contract is for a term of not less than two years.

(2) One motor vehicle which the Commissioner is satisfied is imported as a replacement for a motor vehicle originally imported under paragraph (1) which has been written off due to accident, fire or theft, subject to the Minister's written approval of such importation:

No.13 of 1995

Provided that customs duty shall be payable at the appropriate rate if the written-off motor vehicle is disposed of locally.

(3) Goods for the official use of the United Nations or its specialized agencies or any Commonwealth high commission or of any foreign embassy, consulate or diplomatic mission.

(4) Goods for the use of a high official of the United Nations or its specialized agencies or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such exemption is made by the Minister responsible for foreign affairs.

(5) On first arrival in Kenya or within three months of that date, the household

and personal effects, including one motor vehicle, of an employee of the

United Nations or of its specialized agencies, or a vehicle, of an employee of the United Nations or of its specialized agencies, a Commonwealth high commission, or a foreign embassy, consulate or diplomatic mission where the employee -

(a) is not engaged in any other business or profession in Kenya; and

(b) has not been granted an exemption under item 8(1) and (2) of Part A or item 8(3) of Part B of this Schedule.

8. Aid Agencies

(1) Household and personal effects of any kind imported by entitled personnel or their dependants, including one motor vehicle imported or purchased by them prior to clearance through Customs, within ninety days of their first arrival in Kenya or such longer period, not exceeding three hundred and sixty days from the date of arrival, as may be approved by the Treasury in specific cases, where the entitled personnel have not been granted an exemption under item 7(3) of Part A, or item 8(3) of Part B of the Schedule:

Provided that the exemption under this paragraph shall not apply-

(i) to entitled personnel who may have arrived for a new contract for a term of not less than two years notwithstanding their previous residential status in Kenya while in execution of another aid project;

(ii) only once every four years where there is an on-going project;

(iv) to an additional motor vehicle where there is a bilateral agreement between the Government and an aid agency entered into prior to the 10th June,1999

(2) One motor vehicle which the Commissioner is satisfied is imported as a replacement for another motor vehicle originally imported under paragraph (1) and which has been written off due to accident, fire or theft, subject to the Minister's written approval of such importation:

Provided that customs duty shall be payable at the appropriate rate if the written-off motor vehicle is disposed of locally.

9. The East African Development Bank

Goods and equipment imported by the East African Development Bank for its official use.

10. The War Graves Commission

Goods, including official vehicles but not including office supplies and equipment and the property of the Commission's staff, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission.

11. The British Council

Goods for use by the British Council, which are or will be a charge against the funds of the Council, not including goods for resale or for the personal use of the staff of the Council.

12. Charitable Institutions

(1) Goods, being bona fide gifts (excluding office equipment, stationery and office furniture) –

No. 6 of 1994

No.8 of 1997 S.15

(a) which the Commissioner is satisfied are imported by or consigned to charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act,

and approved by the Commissioner of Social Services for free distribution to poor and needy persons or for use in medical treatment or rehabilitation work in their institutions provided that the Treasury has given its approval in writing where the duty exceeds KShs. 500,000;

(b) consigned to imported by any organization if the Commissioner is satisfied that they are for free donation to charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act, and Approved by the Commissioner of Social Services for free distribution to poor and needy persons or for use in medical treatment or rehabilitation work in their institutions provided that the Treasury has given its approval in writing where the duty exceeds Ksh. 500,000; Cap.108

(i) including equipment, motor vehicles, vessels and aircraft,(excluding motor vehicles of a seating capacity of up to twenty-six persons) consigned to or imported by any organization, if the Commissioner is satisfied that they are for free donation to charitable organizations registered as such by the Registrar of Societies under section 10 of the Societies Act, and are approved by the Commissioner of Social Services for use by the charitable organization in medical treatment, educational, religious or rehabilitation work, provided that the Treasury has given its approval in writing where the duty exceeds Ksh. 500,000 Provided that the Commissioner shall make quarterly returns of all exemptions granted under this paragraph

(2) Goods consigned to the St. John Ambulance for use in its activities and for first aid training.

(3) (a) Goods consigned to the Kenya Red Cross for free distribution in relief work, subject to such limitations and conditions as the Commissioner may impose; and

(b) Equipment, motor vehicle and aircraft donated or purchased for alleviation of hardship or disaster, subject to such limitations and conditions as the Commissioner may impose, provided the Treasury has given its approval in writing where the duty exceeds Ksh.500,000.

(4) Articles of equipment not intended for resale and not including consumable stores or provisions, for use by the Missions to Seamen or other similar organizations approved for the purpose of this paragraph by the Minister, subject to such limitations and conditions as the Commissioner may impose.

(5) Foodstuffs, vehicles, equipment and other commodities imported for the National Freedom from Hunger Committee in Kenya exclusively for use in connection with the official activities of the National Freedom from Hunger Campaign of Kenya.

13. Religious Bodies Altar bread, communion wafers and sacramental wine, imported or purchased by, or for presentation to, any religious body for use in the conduct of religious services. No.8 of 1991 s.34
No.9 of 1992

14. Youth Associations Uniforms and appointments for the use of the Boy Scout, Girl Guide or other similar associations.

15. Disabled and Physical Handicapped Persons No.8 of 1996

Materials, articles and equipment, including motor vehicles, which - s.9

(a) the Commissioner is satisfied are specially designed for the use of disabled and physically handicapped persons; or

(b) intended for the educational, scientific or cultural advancement of blind persons for the use of an organization approved by the Government for the purpose of this exemption:

Provided that the exemption in respect of motor vehicles shall not apply to paragraph (b)

16. Deleted 2001

17. The President's Award Scheme

Badges and record books for use exclusively in the President's Award Scheme.

18. The Desert Locust Control Organization and International Red Locust Control

(1) Goods, including motor vehicles, scientific equipment, apparatus, chemicals, petroleum fuels and other materials imported by the Desert Locust Control Organization for East Africa for its official use or for the personal use of such members of that Organization as may be declared to be entitled officers by the Ministry of Foreign Affairs.

(2) One motor vehicle imported or purchased prior to clearance through customs within three months of first

arrival in Kenya by an entitled officer of the Desert Locust Control Organization for his personal use.

(3) Goods imported for the official use of the International Red Locust Control Organization for Central and Southern Africa.

19. The Navy, Army and Air Force Institute and the Armed Forces Canteen Organization

Goods for the Navy, Army and Air Force Institute and the Armed Forces Canteen Organization, subject to such conditions as the Commissioner may specify, provided that :-

(i) such goods shall be marked with the inscription "NAAFI" or "AFCO" as the case may be, or where it is unsuitable to mark the goods, the containers, bags or packets thereof shall be so marked;

(ii) Goods for the Armed Forces Canteen Organisation shall be cleared through Customs by the Armed Forces Canteen Organisation only.

20. Deleted 2001

21. The Wellcome Trust

(1) All equipment and drugs imported by the Wellcome Trust with the prior approval of the Ministry of Health, for use in connection with medical research.

(2) Motor vehicles imported by the Wellcome Trust, with the prior approval of the Ministry of Health and paid for by the Trust for use by personnel of the science laboratories operated by the Trust:

Provided that customs duty at the appropriate rate shall be payable when the vehicle is sold to a person or body not entitled to buy a vehicle without the payment of duty.

22. The African Medical and Research Foundation

Bona fide gifts, or materials and equipment, consigned to the African Medical and Research Foundation including

(1) high frequency single side band radio transceivers, spares and accessories, antenna materials and fittings, radio alert alarm transmitter receivers and accessories;

(2) filming materials, strip slide projectors and surgical instruments;

(3) drugs;

(4) aircraft, aircraft equipment and spares, but not including (either as gifts or otherwise) motor vehicles:

Provided that materials and equipment specified in subparagraph (1), (2) and (3) shall be for the sole use of the above Foundation or for loan to hospitals and clinics but not for the purpose of distribution to any person or institution by way of gift

23. Deleted.

No.8 of 1991 s.34

24. Deleted.

No.8 of 1991 s.34

25. Deleted.

No.8 of 1991 s.34

26. Members of the National Assembly

One motor vehicle (excluding a bus and a minibus of seating capacity of more than 13 passengers and a load carrying vehicle of a load carrying capacity exceeding two tones) imported or purchased prior to clearance through the customs by a Member of the National Assembly subject to a written recommendation of the Clerk of the National Assembly:

Provided that –

(a) the exemption under this item shall apply only once in every parliamentary term; and

(b) paragraph (a) shall not apply in respect of a motor vehicle imported within the period specified in that paragraph as a replacement for a motor vehicle originally imported under this item which is written off due to accident, fire or theft.

27. Returning Kenya Government's Foreign Missions Personnel

No.8 of 1996

One personal motor vehicle (excluding buses and minibuses of seating capacity of more than 13 passengers and load carrying vehicles of a load carrying capacity exceeding two tones), imported by officer returning from a posting in Kenya's missions abroad or by his spouse and which is not exempted from duty under item 8(4) of Part B of this Schedule:

No.8 of 1996

Provided that the exemption under this item shall not apply-

s.15

- (a) unless the officer is recalled by the Government before he completes his normal tour of duty;
- (b) unless, in the case of an officer's spouse, the spouse had accompanied the officer in the foreign mission and is returning with the officer;
- (c) to an officer who has been recalled for re-posting to another mission outside Kenya;
- (d) unless the motor vehicle was ordered for or purchased prior to such recall;
- (e) unless the exemption is approved in writing by the Treasury;
- (f) if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported a motor vehicle free of duty under 8(4) item of Part B of this Schedule, within the two years immediately before his arrival;
- (g) Unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse or such longer period not exceeding three hundred and sixty days from such arrival as the Commissioner may allow.

28. Safari Rally Drivers

F.A. 1991 No.8

One motor vehicle for each rally driver and spare parts specified in paragraph (2) which

s.34

- (a) are imported or purchased prior to clearance through customs for use in the Safari Rally;
- (b) having been temporarily imported under section 143 of the Act for use in the Safari Rally, are purchased during the period of temporary importation by a rally driver resident in Kenya for use in the Safari Rally;
- (c) having been imported under conditions whereby exemption from payment of duty is

granted under this Schedule, or whereby remission or refund of duty has been granted by the Minister, are purchased by a rally driver resident in Kenya for use in the Safari Rally; and

F.A. 1991 No.8
s.34

(d) In the case of vehicles only, are assembled in Kenya and purchased by a rally driver for use in the Safari Rally.

(2) Paragraph (1) shall apply to the following spare parts imported by a rally driver for use in the Safari Rally-

- (a) one engine assembly complete, or such individual parts making up one engine as the rally driver requires, including, in either case, a starter motor, alternator and clutch;

(b) one gear box assembly complete;

(c) one differential assembly and one front and rear axle assembly, or such individual parts making up one front and rear axle assembly as the rally driver requires;

(d) not more than four front suspension assemblies, or such individual parts making up those assemblies as the rally driver requires;

(e) not more than two sets of rear shock absorbers;

(3) Exemption of duty under paragraph (1) is made on the conditions that-

(a) it applies only to motor vehicles and parts imported or purchased for use by bona fide rally drivers resident in Kenya who has been approved and recommended to the Commissioner, or a person authorized by him in writing, by the Safari Rally Limited and accepted as such by him; and

(b) Where the motor vehicle or parts cease to be used, or, in the case of parts, to reassigned for use, for Safari Rally purposes or are disposed of in Kenya to persons not entitled to exemption from, or remission of duty, duty shall, subject to paragraph (5), immediately become payable at the appropriate rate.

(c) where the motor vehicle or parts cease to be used, or, in the case of parts, to be

(d) assigned for use, for Safari Rally purposes or are disposed of in Kenya to persons not entitled to exemption from, or remission of duty, duty shall, subject to paragraph (5), immediately become payable a the appropriate rate.

(4) Nothing in paragraph (3) (a) or (c) shall prevent motor vehicle or spare parts from being used in other rallies in Kenya.

(5) Where a person to whom an exemption has been granted under this item fails to take part in the rally, duty shall become payable at the rate applicable on the date the rally ends.

29. Kenya Police, National Security Intelligence Service, Administration Police and Kenya Prisons No. 9 of 1992

Equipment, machinery and motor vehicles, including aircraft and vessels imported for the official use of the Kenya Police, Administration Police and Kenya Prisons, with the written approval of the Treasury. No. 6 of 1994
No. 8 of 1997

30. Deleted 2001

31. The Kenya Olympic Team

Equipment imported by or on behalf of the ministry for the time being responsible for sports for the sole use of the Kenya Olympic Team. No. 9 of 1992

32. Contraceptives

FOURTH SCHEDULE*(Export duty)***PART 1**

| <i>Tariff No.</i> | <i>Tariff Description</i> | <i>New Duty Rate</i> |
|--------------------------|---|-----------------------------|
| 4101.20.00 | Whole hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 16kg when fresh, wet-salted or otherwise preserved. | 20% |
| 4101.40.00 | Hides and skins of equine animals. | 20% |
| 4101.50.00 | Whole hides and skins, of weight exceeding 16 kg | 20% |
| 4101.90.00 | Other, including butts, bends and bellies | 20% |
| 4102.10.00 | Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1© to Chapter 41. | 20% |
| 4102.21.00 | Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41. | 20% |
| 4102.29.00 | Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note (c) to Chapter 41. | 20% |
| 4103.10.00 | Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note (b) or 1 (c) | 20% |
| 4103.20.00 | Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles. | 20% |
| 4103.30.00 | Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter of swine. | 20% |
| 4103.90.00 | Other raw hides and skins other than of reptiles, goats or kids. | 20% |
| 4104.11.00 | Full grains, upsplit; grain splits, in the wet state (including wet-blue). | 20% |
| 4104.19.00 | Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet – blue). | |
| 4104.41.00 | Full grains, unsplit; grain splits, in the dry state (crust) | 20% |
| 4104.49.00 | Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the dry state (rust). | 20% |

| | | |
|------------|---|-----|
| 4105.10.00 | Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared, in the wet state (including wet-blue) | 20% |
| 4105.30.00 | Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared, in the dry state (crust) | 20% |
| 4106.21.00 | Tanned or crust hides and skins of goats or kids, without wool on or hair on, whether or not split, but not further prepared, in the wet state (including wet-blue) | 20% |
| 4106.22.00 | Tanned or crust hides and skins of goats or kids, without wool on or hair on, whether or not split, but not further prepared, in the dry state (crust) | 20% |
| 4106.31.00 | Tanned or crust hides and skins of swine, without wool on or hair on, whether or not split, but not further prepared, in the wet state (including wet-blue) | 20% |
| 4106.32.00 | Tanned or crust hides and skins of swine, without wool on or hair on, whether or not split, but not further prepared in the dry state (crust). | 20% |
| 4106.40.00 | Tanned or crust hides and skins of reptiles, without wool on or hair on, whether or not split, but not further prepared. | 20% |
| 4106.91.00 | Tanned or crust hides and skins of reptiles, without wool on or hair on, whether or not split, but not further prepared | 20% |
| 4106.92.00 | Tanned or crust hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared, in the dry state (crust) | 20% |
| 4301.10.00 | Raw furskins of mink, whole, with or without head, tail or paws. | 20% |
| 4301.30.00 | Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws | 20% |
| 4301.60.00 | Raw furskins of fox, whole, with or without head, tail or paws | 20% |
| 4301.70.00 | Raw furskins of seal, whole, with or without head, tail or paws | 20% |
| 4301.80.00 | Other raw furskins, whole, with or without head, tail or paws | 20% |
| 4301.90.00 | Heads, tail, paws and other pieces or cuttings, suitable for furriers' use | 20% |
| 4302.11.00 | Whole skins, with or without head, tail or paws, not assembled, or mink. | 20% |
| 4302.13.00 | Whole skins of lamb, with or without head, tail or paws, not assembled, the following: astrakhan, broadtail, caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb. | 20% |
| 4302.19.00 | Other whole skins, with or without head, tail or paws, not assembled. | 20% |
| 4302.20.00 | Heads, tails, paws and other pieces or cuttings, not assembled. | 20% |
| 4302.30.00 | Whole skins and pieces or cuttings thereof, assembled. | 20% |
| 7204.10.00 | Waste and scrap of cast of iron. | 20% |
| 7204.29.00 | Waste and scrap of other alloy or steel. | 20% |
| 7204.30.00 | Waste and scrap of tinned iron steel. | 20% |
| 7204.41.00 | Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles, or iron or steel. | 20% |
| 7204.49.00 | Other waste and scrap or iron or steel. | 20% |
| 7204.50.00 | Remelting scrap ingots. | 20% |

| | | |
|------------|---|-----|
| 7205.10.00 | Granules of pig iron, spiegeleisen, iron or steel | 20% |
| 7112.30.00 | Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of ash containing precious metal or precious metal compounds. | 20% |
| 7112.91.00 | Other waste and scrap of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of gold including metal clad with gold. | 20% |
| 7112.92.00 | Other waste and scraps of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of platinum, including metal clad with platinum. | 20% |
| 7112.99.00 | Other waste and scrap of precious metal or metal clad with precious metal, other waste and scrap containing precious metal compounds, of a kind used principally for the recovery of precious metal. | 20% |
| 7602.00.00 | Aluminum waste and scrap. | 20% |
| 7503.00.00 | Nickel waste and scrap. | 20% |
| 7404.00.00 | Copper waste and scrap. | 20% |
| 7902.00.00 | Zinc waste and scrap. | 20% |
| 8002.00.10 | Tin waste and scrap. | 20% |
| 8102.94.00 | Unwrought molybdenum including bars and rods obtained simply by sintering; waste and scrap. | 20% |
| 8102.97.00 | Waste and scrap of molybdenum. | 20% |
| 8103.30.00 | Waste and scrap of tantalum. | 20% |
| 8104.20.00 | Waste of scrap of magnesium. | 20% |
| 8105.00.00 | Bismuth and articles thereof including waste and scrap. | 20% |
| 8105.30.00 | Waste and scrap of cobalt matters. | 20% |
| 8207.30.00 | Waste and scrap of cadmium. | 20% |
| 8108.30.00 | Waste and scrap of titanium. | 20% |
| 8109.30.00 | Waste and scrap of zirconium. | 20% |
| 8110.20.20 | Waste and scrap of antimony | 20% |
| 8112.13.00 | Waste and scrap of beryllium | 20% |
| 8112.22.00 | Waste and scrap of chromium. | 20% |
| 8112.52.00 | Waste and scrap of thallium. | 20% |
| 8112.92.00 | Unwrought waste and scrap; powders | 20% |

PART II

“Part I shall not apply to exports to Export Processing Zones”.

FIFTH SCHEDULE
(*excluded are goods not subject to Excise duty*)

RATES OF EXCISE DUTY

(S.117 (1))

PART I

| Tariff No | Goods Description | Rate of duty |
|------------|---|--------------|
| 2009.11.00 | Frozen orange juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.12.00 | Orange juice not frozen, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20. | 7% |
| 2009.19.00 | Other orange juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.21.00 | Grape fruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.29.00 | Other grape fruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.31.00 | Juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter of a brix value not exceeding 20. | 7% |
| 2009.39.00 | Other juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.41.00 | Pineapple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20. | 7% |
| 2009.49.00 | Other pineapple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.50.00 | Tomato juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.61.00 | --- grape juice (including grape must), unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20. | 7% |
| 2009.69.00 | Grape juice (including grape must), unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |

| Tariff No | Goods Description | Rate of duty |
|------------------|--|-------------------------|
| 2009.71.00 | Apple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20. | 7% |
| 2009.79.00 | Other apple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.80.00 | Juice of any other single fruit or vegetable, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter. | 7% |
| 2009.90.00 | mixtures of Juices, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter | 7% |
| 2106.90.90 | Other food preparations not elsewhere specified or included | 7% |
| 2201.10.00 | Mineral waters and aerated waters, including natural or artificial, not containing added sugar or other sweetening matter nor flavoured | shs 3 or 5% per litre |
| 2201.90.00 | Other natural or artificial waters not containing added sugar or other sweetening matter nor flavoured, ice and snow; | shs 3 or 5% per litre |
| 2202.10.00 | Waters, including Mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured | 7% |
| 2202.90.00 | Other non- alcoholic beverages | 7% |
| 2203.00.10 | Stout and porter beer made from malt | Shs 65 per litre |
| 2203.00.90 | Other beer made from malt | Shs 65 per litre |
| 2204.10.00 | Sparkling wine of fresh grapes, including fortified wine obtained by distilling grape wine or grape marc | Shs 70 or 35% per litre |
| 2204.21.00 | Other wine; grape must with fermentation prevented or arrested by the addition of alcohol in containers holding 2 litres or less | Shs 70 or 35% per litre |
| 2204.29.00 | Other wine; grape must with fermentation prevented or arrested by the addition of alcohol in containers holding more than 2 litres | Shs 70 or 35% per litre |
| 2204.30.00 | Other grape must | Shs 70 or 35% per litre |
| 2205.10.00 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances, in containers holding 2 litres or less | Shs 70 or 35% per litre |
| 2205.90.10 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers holding more than 2 litres | Shs 70 or 35% per litre |

| Tariff No | Goods Description | Rate of duty |
|------------------|--|------------------------------------|
| 2206.00.10 | Cider | Shs. 55 per litre |
| 2206.00.20 | Opaque beer | Shs. 55 per litre |
| 2206.00.90 | Other fermented beverages | Shs.55 per litre |
| 2207.10.00 | Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher | Shs. 120 or 35% per litre |
| 2207.20.10 | Ethyl alcohol and other spirits, denatured, of any strength | Sh. 120 per litre or 35% |
| 2208.20.00 | Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol spirits obtained by distilling grape wine or grape marc. | Shs. 120 or 35% per litre |
| 2208.30.00 | Whiskies | Shs. 120 or 35% per litre |
| 2208.40.00 | Rum and other spirits obtained by distilling fermented sugar-cane products | Shs. 120 or 35% per litre |
| 2208.50.00 | Gin and Geneva | Shs. 120 or 35% per litre |
| 2208.60.00 | Vodka | Shs. 120 or 35% per litre |
| 2208.70.00 | Liqueurs and cordials | Shs. 120 or 35% per litre |
| 2208.90.10 | Distilled Spirits (e.g., Konyagi, Uganda Waragi) | Shs. 120 or 35% per litre |
| 2208.90.90 | Other spirits and other spirituous beverages | Shs. 120 or 35% per litre |
| 2402.10.00 | Cigars, cheroots and cigarillos, containing tobacco | 130% |
| 2402.90.00 | Other Cigars, cheroots and cigarillos, containing tobacco substitutes | 130% |
| 2403.10.00 | Smoking tobacco, whether or not containing tobacco substitutes in any proportion | 130% |
| 2403.91.00 | Homogenised or reconstituted tobacco | 130% |
| 2403.99.9 | Other manufactured tobacco and manufactured tobacco substitutes | 130% |
| 2709.00.10 | condensates | Per 1000l @ 20degC shs. 6225.00 |

| Tariff No | Goods Description | Rate of duty |
|------------------|--|-------------------------------------|
| 2710.11.10 | Motor Spirit (gasoline) regular | Per 1000l @ 20degC shs. 19505.00 |
| 2710.11.20 | Motor Spirit (gasoline) premium | Per 1000l @ 20degC Shs. 19895.00 |
| 2710.11.30 | Aviation Spirit | Per 1000l @ 20degC Shs. 19895.00 |
| 2710.11.40 | Spirit type Jet Fuel | Per 1000l @ 20degC Shs. 19895.00 |
| 2710.11.50 | Special boiling point spirit and white spirit | Per 1000l @ 20degC Shs. 8500.00 |
| 2710.11.90 | Other light oils and preparations | Per 1000l @ 20degC Shs. 8500.00 |
| 2719.19.10 | Partly refined (including topped crude) | Per 1000l @ 20degC Shs. 1450.00 |
| 2710.19.21 | Kerosene type Jet Fuel | Per 1000l @ 20degC Shs. 5755.00 |
| 2710.19.22 | illuminating kerosene | Per 1000l @ 20degC Shs. 7205.00 |
| 2710.19.29 | Other medium oils and preparations | Per 1000l @ 20degC Shs. 5300.00 |
| 2710.19.31 | Gas oil (automotive, light, amber for high speed engines) | Per 1000l @ 20degC Shs. 10305.00 |
| 2710.19.32 | Diesel oil (industrial heavy, black, for low speed marine and stationery engines) | Per 1000l @ 20degC Shs. 3700.00 |
| 2710.19.39 | Other gas oils | Per 1000l @ 20degC Shs. 6300.00 |
| 2710.19.41 | Residual fuel oils(marine, furnace and similar fuel oils) of a Kinematic viscosity of 125 centistokes | Per 1000l @ 20degC Shs. 300.00 |
| 2710.19.42 | Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 180 centistokes | Per 1000l @ 20degC Shs. 600.00 |
| 2710.19.43 | Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 280 centistokes | Per 1000l @ 20degC Shs. 600.00 |
| 2710.19.37 | Other residual fuels oils | Per 1000l @ 20degC Shs. 600.00 |
| 2712.10.00 | Petroleum jelly | 5% |
| 3303.00.10 | Perfumes ad Toilet waters. | 5% |
| 3304.10.00 | Lip make-up preparations | 5% |
| 3304.20.00 | Eye make-up preparations | 5% |

| Tariff No | Goods Description | Rate of duty |
|------------------|--|---------------------|
| 3304.30.00 | Manicure or pedicure preparations | 5% |
| 3304.91.00 | Other powders, whether or not compressed | 5% |
| 3304.99.00 | Other beauty or make up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations | 5% |
| 3305.10.00 | Shampoos | 5% |
| 3305.20.00 | Preparations for permanent waving or straightening of hair | 5% |
| 3305.30.00 | Hair lacquers | 5% |
| 3305.90.00 | Other preparations for the use on hair | 5% |
| 3307.10.00 | Pre-shave, shaving or after-shave preparations | 5% |
| 3307.20.00 | Personal deodorants and antiperspirants | 5% |
| 3307.30.00 | Perfumed bath salts and other bath preparations | 5% |
| 3307.49.00 | Other preparations for perfuming or deodorizing rooms, including odoriferous preparations use during religious rites | 5% |
| 3307.90.00 | Depilatories and other perfumed, cosmetic or toilet preparations, not elsewhere specified or included | 10% |
| 8702.10.19 | assembled four wheel drive motor Vehicles for the transport of ten persons, including the driver (diesel or semi diesel) | 20% |
| 8702.10.22 | assembled motor Vehicles for the transport of not more than 15 persons(diesel or semi diesel) | 20% |
| 8702.10.29 | assembled motor Vehicles for the transport more than 15 but not exceeding 25 persons, (diesel or semi diesel) | 20% |
| 8702.90.19 | sembled four wheel drive motor Vehicles for the transport of ten persons, including the driver | 20% |
| 8702.90.29 | sembled four wheel drive motor Vehicles for the transport of ten persons, (including the driver) but not exceeding 25 persons | 20% |
| 8703.10.00 | ehicles specially designed for traveling on snow; golf cars and similar vehicles | 20% |
| 8703.21.90 | assembled passenger motor vehicles, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity not exceeding 1000cc | 20% |

| Tariff No | Goods Description | Rate of duty |
|------------------|---|---------------------|
| 8703.22.90 | assembled passenger motor vehicles, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500 cc | 20% |
| 8703.23.90 | assembled passenger motor vehicles, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 3000 cc | 20% |
| 8703.24.90 | assembled passenger motor vehicles, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000 cc | 20% |
| 8703.31.90 | assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity not exceeding 1500 cc | 20% |
| 8703.32.90 | assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity exceeding 1500cc but not exceeding 2500 cc | 20% |
| 8703.33.90 | assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity exceeding 2500cc. | 20% |
| 8703.90.90 | Other assembled motor vehicles for the transport of persons | 20% |

PART II

Cigarettes

| Category | Description | Rate of duty |
|-----------------|--|----------------------|
| A | Plain cigarettes with RSP of up to Shs. 2,500 per mille | Shs. 700 per mille |
| B | Soft cap cigarettes of 72mm or less, or soft cap cigarettes of 72mm or less with RSP of Shs. 2,501 to Shs. 3,500 per mille | Shs. 1,000 per mille |
| C | Soft cup cigarettes with RSP of Shs.3,501 to 4,500 per mille | Shs. 1,500 per mille |
| D | Hinge lid cigarettes or cigarettes with RSP of more than Shs. 4,500 per mille | Shs. 2,500 per mille |

(RSP means Retail Selling Price)

PART III

1. Deleted
2. Mobile cellular phone services shall be charged excise duty at the rate of 10% of their excisable value.
3. Other wireless telephone services shall be charged excise duty at the rate of 10% of their excisable value.
4. All imported used computers of more than three years from the date of manufacture shall attract excise duty at the rate of 25%.
5. Plastic shopping bags shall be charged excise duty at the rate of 50% of their excisable value.

SIXTH SCHEDULE (s. 225)

Form of Warrant of Distress

To:.....

I,..... Commissioner of Customs and Excise, by virtue of the powers vested in me by section 225 of the Customs and Excise Act, do hereby authorize you to collect and recover the sum of due as duty from..... (*name of person owing duty*) having his factory/premises at and for the recovery thereof I further authorize that you, with the aid (if necessary) of your assistant and calling to your assistance (if necessary) any police officer, which assistance they are hereby required to give, do forthwith levy by distress that sum together with the costs and charges of and incidental to the taking and keeping of the distress, on the goods, chattels or other distrainable things of..... (*name of person owing duty*) whenever they may be found, and on all plant, vessels, vehicles, animals and other articles used within Kenya in the manufacture, sale or distribution, of excisable or other goods which you may find in any premises or on any land in the use or possession of that person or of any other person on his behalf or in trust for him.

And for the purpose of levying distress you are hereby authorized, if necessary with assistance as aforesaid, to break open any building or place during the daytime.

Given under my hand at..... on the 19....

.....
Commissioner of Customs and Excise.

SEVENTH SCHEDULE (s. 127)

VALUE OF IMPORTED GOODS

The customs value of imported goods shall be determined through application of the following Articles in the sequence indicated except where otherwise stated.

ARTICLE 1

VALUE OF THE GOODS

The customs value of imported goods shall be the price actually paid or payable for the goods when sold for export to Kenya, adjusted in accordance with the provisions of Appendix B, provided -

(1) (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-

(i) are imposed or required by law;

(ii) limit the geographical area in which the goods may be resold ; or

(iii) do not substantially affect the value of the goods; and

(b) that the price is not subject to some condition or consideration for which a value cannot be determined with respect to the value of the goods being valued.

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of appendix B; and

(d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is accepted for customs purposes under the provisions of paragraph (2).

(2) (a) (i) In cases where the buyer and the seller are related, within the meaning of Appendix C, the transaction value shall be accepted provided that the relationship did not influence the price.

(ii) Where the customs has grounds for considering that the relationship influenced the price of the goods, it shall communicate the grounds in writing to the importer and shall afford reasonable time for the importer to respond thereto.

(b) The customs shall accept the transaction value in a sale between related persons where the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) The transaction value in sales by the same party to unrelated buyers of identical or similar goods sold for export to Kenya.
 - (ii) The customs value of identical or similar goods as determined under the provisions of article 5.
 - (iii) The customs value of identical or similar goods as determined under the provisions of article 6.
- (c) In applying the foregoing tests, due account shall be taken demonstrated differences in commercial levels, quantity levels, the elements enumerated in Appendix B and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.
- (d) The tests set forth in paragraph (2) (b) shall be applied at the initiative of the importer and only for comparison purposes.

ARTICLE 2

TRANSACTION VALUE OF IDENTICAL GOODS

1(a) If the customs value of imported goods cannot be determined under the provisions of article 1, the customs value shall be the transaction of identical goods sold by other sellers for export to Kenya at or about the same time as the goods being valued.

(b) Under this article, the transaction value of goods shall be -

(i) The transaction value of identical goods an a sale at the same commercial level and in substantially the same quantity as the goods being valued; or shall be used to determine the customs value.

(ii) Where no such sale is found, the transaction value of identical goods sold at a different commercial level or in different quantities adjusted to take account of differences attributable to commercial level or to quantity:

Provided that such adjustments are made on the basis of demonstrated evidence which establishes the reasonableness and accuracy of adjustment, whether the adjustment leads to an increase or a decrease in the value.

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

(3) If, in applying this article, more than one transaction value of identical goods is

found, the lowest such value shall be used to determine the the customs value of the imported goods being valued.

ARTICLE 3

TRANSACTION VALUE OF SIMILAR GOODS.

(1)(a) If the customs value of imported goods cannot be determined under the provisions of article 1 or 2, the customs value shall be the transaction of identical goods sold by other sellers for export to Kenya at or about the same time as the goods being valued.

(b) Under this article, the transaction value of goods shall be determined using -

(i) the transaction value of similar goods an a sale at the same commercial level and in substantially the same quantity as the goods being valued; or

(ii) the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity:

Provided that such adjustments are on basis of demonstrated evidence which establishes the reasonableness and accuracy of adjustment, whether the adjustment leads to an increase or a decrease in the value.

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

(3) If, in applying this article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the the customs value of the imported goods being valued.

ARTICLE 4

Where the customs value of imported goods cannot be determined under the provisions of Article 1, 2 or 3, Article 5 and 6 may be applied, and the sequence of application shall be reversed at the request of the importer.

ARTICLE 5

DEDUCTIVE VALUE

(1) (a) If the imported goods or identical or similar imported goods are sold in Kenya in the same condition as they were imported the customs value of the imported goods under the provisions of this article shall be based on the unit price

at which the imported goods or identical or similar goods are sold in the greatest aggregate quantity, at or about the time of importation of the goods being appraised, to persons who are not related to the person from whom they buy such goods, subject to deductions for the following:

(i) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales of such goods or goods of the same class or kind imported in Kenya;

(ii) The usual costs of transport and insurance and associated costs within Kenya territory;

(iii) Where appropriate, the costs and charges referred to in paragraph (2) of appendix B; and

(iv) The customs duties and other national taxes (Value Added Tax, excise etc.) payable in Kenya by reason of importation or the sales of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation as the goods being appraised, the customs value shall, subject to the provisions of paragraph (1) (a) be based on the unit price at which the imported goods or identical or similar imported goods are sold in Kenya in the same condition as imported at the earliest date after importation of the goods being appraised but before the expiration of ninety days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Kenya in the same condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing are sold in the greatest aggregate quantity to persons in Kenya who are not related to the persons from whom they buy such goods, due allowance being made for the value by which such processing and the deductions provided for in paragraph 1 (a).

(3) The term "unit price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

ARTICLE 6

COMPUTED VALUE AS FOR DUTY

(1) Subject to provisions under this article, the value for customs purposes shall be based on the compound value. The compound value of goods being appraised is the the aggregate of amounts equal to :

(a) Subject to paragraph (2), the cost, charges and expenses incurred in respect of,

or the value of-

- (i) materials employed in producing the goods being appraised; and
- (ii) the production or other processing of the goods being appraised and determined in the manner prescribed; and
- (b) The amount, determined for the manner prescribed, for profit and general expenses considered together as a whole, that is generally reflected in sales for export into Kenya of goods of the same class or kind as the goods being appraised made by the producer in the country of export.

(2) Without limiting the generality of paragraph (1) (a) the cost, charges, expenses, and value referred to in that paragraph include -

- (i) the cost or value of materials and fabrication or other processing employed in producing the imported goods.
- (ii) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being appraised which are made by producers in the country of exportation for export to Kenya;
- (iii) the cost or value of all other expenses necessary to reflect the adjustment in paragraph (2) of appendix B;

(3) To allow access to any account or other record for the purposes of determining a compound value the importer shall maintain proper books of account, (including sales contract, purchase orders, invoices or agreements) and shall be responsible for the information supplied by the seller of the goods being appraised. However the Commissioner as provided under section 8 of this Act shall verify information supplied by the producer of the goods through the importer in the country of export.

(Appendix A)

(1) If the customs value of imported goods cannot be determined under the provisions of article 1 or 6, the customs value shall be determined using reasonable means consistent with principles and general provisions of the World Trade Organization (WTO) Agreement on Customs Valuation and of Article VII of GATT 1994 and on the basis of available data collected by customs or supplied by the importer.

(2) However, no customs value shall be determined under the provisions of this Act on the basis of-

- (a) the selling price of identical or similar goods produced in Kenya;
- (b) a system which provides for the acceptance for customs purposes the higher of

two alternative values;

- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of method 6;
- (e) the price of goods for export to another country other than Kenya from the country of export;
- (f) minimum customs values, or
- (g) arbitrary or fictitious values.

(3) If the importer so requests, the importer shall be informed in writing of the Customs value determined under the provisions of this Act and the method used to determine such value.

(Appendix B)

(1) In determining the customs value under the provisions of article 1 of this Schedule there shall be added to the price paid or payable for imported goods:

(a) the following, to the extent they are incurred by the buyer but are not included in the transaction price:

- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials.

(b) The value apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods to the extent that such value has not been included in the transaction value:

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods, engineering, development, artwork, design work, and plans and sketches undertaken elsewhere in Kenya and necessary for the production of the imported goods;

- (c) Royalties and licence fees related to the goods being valued payable by the buyer, to the extent that such royalties and fees are not include in the transaction value.
 - (d) The value or any part of the proceeds of any subsequent sale, resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
 - (e) The freight cost or the cost of transport of the imported goods to the port of discharge (point of entry);
 - (f) the handling charges associated with the transport of the goods to the port or place of importation;
 - (g) other costs associated to the transport of the imported goods.
- (2) Additions to the price paid or payable shall be made under this Act only on the basis of objective and quantifiable data.
- (3) No additions shall be made to the price paid or payable in determining the customs value except as provided under this Schedule.

Appendix C

RELATED PERSONS

(1) For the purposes of this Act, persons shall be deemed to be related if-

- (a) They are officers or directors of one another's business;
- (b) they are legally recognized partners in business;
- (c) one is an employee of another;
- (d) one person directly or indirectly owns, controls or holds five percent or more of the outstanding voting stock or shares or both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person ; or
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.
- (i) one is sole distributor or sole concessionaire, however described, of the other.

EIGHTH SCHEDULE(ss. 14, 15, 16, 59, 60, 61)*(Prohibited and Restricted Goods)*

PART A - PROHIBITED IMPORTS

- 10 of 1980,
s. 2, 12 of 1980,
Sch., 6 of 1981, s.
2, L.N. 18/1981,
10 of 1986, s. 14, 9
of 1992, s. 17. 4 of
1999. Cap. 242
1. All goods the importation of which is prohibited under this Act or of any law for the time being in force in Kenya.
 2. False money or counterfeit currency notes or coin, and any money not being of the established standard in weight or fineness.
 3. Indecent or obscene prints, paintings, books, cards, lithographs, or other engravings, and any indecent or obscene articles.

4. Matches in the manufacture of which white phosphorus has been employed.

4A. denatured spirits, unless in respect of each consignment, there is produced a certificate issued in the country of exportation or shipment by such official authority as may be acceptable to the commissioner, that the spirits have been denatured in accordance with the provisions of this Act.

5. Any article marked, without proper authority, with the Armorial Ensigns or Coat of Arms of Kenya, or having ensigns or arms so closely resembling them as to be calculated to deceive.

6. (1) Any advertisement or statement intended to promote the sale of any medicine, appliance or article for the alleviation or cure of tuberculosis, or of cancer, or of any venereal disease affecting the generative organs or functions, or of sexual impotence, or of any complaint or infirmity arising from or relating to sexual intercourse, in or of humans:

Provided that nothing herein shall apply to a book, document or paper published for the advancement of medical science and intended for the use of a Government department or registered medical practitioner.

(2) Any medicine, appliance or article to which is affixed an advertisement or statement referred to in paragraph (1) or to which such an advertisement or statement relates.

7. Distilled beverages containing essential oils or chemical products which are injurious to health, including thujone, star anise, benzoic aldehyde, salicylic esters,

hyssop and absinthe:

Provided that nothing herein contained shall apply to "Anise" and "Anisette" liqueurs containing not more than 0.1 per centum of oil of anise and distilled from either *Pimpinella anisum* or the star anise *Allicium verum*.

8. Deleted by 9 of 1992, s. 17.

9. Deleted by 9 of 1992, s. 17.

10. Manufactured articles bearing the name, address, or trade mark of any manufacturer or dealer, or the name of any place in Kenya, calculated to impart to those articles a special character of Kenya manufacture and which are not of that manufacture.

11. Firearms and ammunition of all types and other articles having the appearance of lethal weapons imported by post.

12. Any goods certified by the Kenya Bureau of Standards as not meeting the standards set by that bureau or declared by a medical officer of health appointed under the Public Health Act, to be hazardous to health.

provided that such goods shall be re-exported or destroyed within thirty days of the date the goods are declared prohibited imports;

14. Used tyres, except those imported as raw materials by approved tyre retreaders.

16. Potable spirits imported in containers the capacity of which is 200 millilitres or less.

PART B - RESTRICTED IMPORTS

1. All goods the importation of which is for the time being regulated under this Act or of any law for the time being in force in Kenya.

2. Deleted by 9 of 1992, s. 17.

3. Tear gas and any other similar lachrymatory substance (whether in liquid or gaseous form) whatsoever, and any device or instrument specifically designed to expel tear gas or any such other similar lachrymatory substance (whether in liquid or gaseous form), except under and in accordance with the terms of a written permit granted by the Minister responsible for matters relating to the police force.

4. Potable spirits, unless in respect of each consignment of spirits there is produced a certificate of age, issued in the country of production or shipment by such official authority as may be acceptable to the Commissioner showing that the

spirits have been stored in wood for a period of not less than three years:

Provided that -

(i) the Commissioner may accept in place of a certificate of age a sworn declaration to the same effect from the blender or exporter of the spirits in respect of all shipments made within a period of twelve months from the date of such declaration;

(ii) no certificate of age or declaration shall be necessary in respect of potable spirits which the Commissioner is satisfied are -

(a) alcoholic bitters, liqueurs, cordials and similar alcoholic mixtures;

(b) gin, geneva, hollands, schnapps, rum or any other similar potable spirits;

(c) spirits imported for medical, industrial or scientific purposes.

5. Postal franking machines, except under and in accordance with the terms of a written permit granted by the Managing Director of the Kenya Posts and Telecommunications Corporation.

6. Traps capable of killing or capturing any game animal, except under and in accordance with the terms of a written permit granted by the Chief Game Warden.

7. Articles bearing Boy Scout or Girl Guide badges, tokens or emblems, except under and in accordance with the terms of a written permit granted by the Boy Scout or Girl Guide Commissioner.

8. Sound moderators or silencers capable of being fitted to a firearm as defined in the Firearms Act, except under and in accordance with the terms of a written permit granted by the Chief Game Warden.

9. Unwrought precious metals, and precious metals which are not manufactured or made up into any article of commerce, from Zaire, Rwanda or Burundi whether to be imported in transit or for transshipment or otherwise except under and in accordance with a written permit granted by the Minister.

10. Used motor vehicles, unless there is, in respect of each such vehicle, a certificate of roadworthiness from an officially recognized Government agent of the country of export.

PART C - PROHIBITED EXPORTS

1. All goods the exportation of which is prohibited under this Act or any law for the time being in force in Kenya.

2. Deleted by 9 of 1992, s. 17.

3. Firearms and ammunition of all types and other articles having the appearance of lethal weapons exported by post.

PART D - RESTRICTED EXPORTS

1. All goods the exportation of which is regulated under this Act or of any law for the time being in force in Kenya,

2. The following goods shall not be exported in vessels of less than ten tons register -

(a) warehoused goods;

(b) goods under drawback;

(c) goods for transshipment.

3. Deleted by 5 of 1998 s.16.

NINTH SCHEDULE (s. 145)

Privileged International Organizations and Personnel

United Nations Organization (of which the United Nations Children 8 Emergency Fund and the United Nations Fund are integral parts) or any of the following: -

(1)The International Labour Organization;

(2) The Food and Agricultural Organization of the United Nations;

(3) The United Nations Educational, Scientific and Cultural Organization;

(4) The International Civil Aviation Organization;

(5) The World Health Organization;

(6) The World Meteorological Organization;

(7) The Universal Postal Union;

(8) The International Telecommunications Union;

- (9) The International Atomic Energy Agency;
- (10) The United Nations Development Programme;
- (11) The United Nations High Commission for Refugees;
- (12) The United Nations Environment Programme;
- (13) The International Bank for Reconstruction and Development;
- (14) The European Economic Community;
- (15) The Arab League;
- (16) The Organization of African Unity;
- (17) The United States Agency for International Development;
- (18) The Regional Centre for Services in Mapping and Surveying;
- (19) The Economic Commission for Africa;
- (20) The Desert Locust Control Organization for Eastern Africa;
- (21) The International Red Locust Control Organization for Central and Southern Africa;
- (22) The United Nations Information Centre;
- (23) United Nations Industrial Development Organization;
- (24) The United Nations Organization on Human Settlement.

TENTH SCHEDULE (s. 3)**Declaration by Officer**

I, do declare that I will be true and faithful to the best of my knowledge and power in the execution of the trust committed to my charge and inspection in the service of the Customs and Excise Department, and that I will not acquire, take or receive any fee, perquisite, gratuity or reward whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatsoever, other than my salary and what is, or may be, allowed me by law or by a special order of the Government.

ELEVENTH SCHEDULE (s. 117)**GOODS LIABLE TO VARIABLE IMPORT DUTY**

9 of 1992, s.18, L.N.334/1994, L.N.38671994. The following goods shall be liable to variable import duty at a rate of the sum of -

- (i) the greater of the difference between the Domestic Reference Price and the Import Reference Price or zero; and
- (ii) any element of subsidy as determined by the Minister arising in the importation of the goods into Kenya where it appears to the Minister that the goods have been dumped in accordance with sections 125 and 126 of the Act;

where-

"Domestic Reference Price" means minimum buying or guaranteed price from or for domestic producers as declared every three months by notice in the Gazette by the Minister;

"Import Reference Price" means the average quoted price at a major international marketing centre for the goods plus the following-

- (a) freight charges to the port of entry into Kenya;
- (b) insurance charges;
- (c) handling and wharfage charges at the port of entry at the rate of 3 per cent of the C.I.F. value (cost, insurance and freight);
- (d) the clearing and forwarding charges at 1 per cent of the C.I.F. value;
- (e) pre-shipment inspection fee at the rate of 2 per cent of the F.O.B. value (free on

board); and

(f) in the case of sugar the sugar development levy at the rate of 5 per cent of the C.I.F. value and a value added tax or rate of the landed cost as declared every three months by notice in the Gazette by the Minister; where the average quoted price is based on the spot and forward prices for the goods for the three months period commencing on or about the date of publication of the Import Reference Price.

| Tariff No. | Tariff Description |
|------------|--|
| 0402.10.00 | Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content by weight, not exceeding 1.5%. |
| 0402.21.00 | Milk and cream, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter. |
| 0402.29.10 | Milk and cream, in powder, granules or other solid forms, of a fat content, by weight exceeding 1.5%, specially prepared for infants. |
| 0402.29.90 | Other milk and cream, in powder, granules or other solid forms, of a fat content, by weight exceeding 1.5%. |
| 1001.10.00 | Durum wheat. |
| 1001.90.00 | Other wheat and meslin. |
| 1005.90.00 | Maize (corn) other than for sowing. |
| 1006.10.00 | Rice in the husk (paddy or rough). |
| 1006.20.00 | Husked (brown) rice. |
| 1006.30.00 | Semi-milled or wholly milled rice, whether or not polished or glazed. |
| 1006.40.00 | Broken rice. |
| 1701.11.10 | Jaggery. |
| 1701.11.90 | Other cane sugar. |
| 1701.12.00 | Beet Sugar. |

SCHEDULE 1. To qualify for reduction of the duty under this notice, the wheat flour shall meet the requirements of the Rules of Origin as set out in the Protocol on the Rules of Origin for Products to be Traded between the Member States of the COMESA. Provided that this notice shall- (a) in the case of Egypt, apply to the importation of up to 32,400 metric tones of wheat flour; (b) in the case of Mauritius, apply to the importation of up to 2,366 metric tones of wheat flour; 2. The respective quantities of wheat flour to be imported by each importer under the proviso to paragraph (1) shall be determined, prior to importation, in accordance with a non-discriminatory auction system as may be prescribed by the Minister for the time being responsible for agriculture. The provisions of this notice shall expire on the 31st May, 2007.

. Legal Notice No. 29 of 2006 is revoked. Made on the 7th August, 2006.

AMOS KIMUNYA,
Minister for Finance.

L.N.128/1984

SUBSIDIARY LEGISLATION

L.N.163/1990

(Notices deemed to have been made under section 9 by virtue of section 235 (2) of the Act)

APPOINTMENT AND LIMITS OF PORTS, CUSTOMS AREAS, ETC.

IN EXERCISE of the powers conferred by section 9 of the Customs and Excise Act, the Commissioner of Customs and Excise appoints -

(a) the places specified in the first column of the First Schedule, as ports for the purposes of the Act and the limits of each port shall be those set out in the second column of that Schedule;

(b) the places specified in the Second Schedule for the purposes set out in the Schedule;

(c) the places specified in the Third Schedule as places for loading and unloading for the purposes set in the third column of that Schedule and the limits of each place shall be those set out in the second column of that Schedule;

(d) the places specified in the first column of the Fourth Schedule, as customs airports and the limits of each airport shall be those set out in the second column of that Schedule;

(e) the places specified in the first column of the Fifth Schedule as customs airports for the limited purposes set out in the third column of that Schedule and the limits of each airport shall be those set out in the second column of that Schedule;

(f) the places specified in the Sixth Schedule as boarding stations subject to such conditions as the proper officer may specify;

(g) the places specified in the first column of the Seventh Schedule as customs areas and the purposes and limits of each area shall be those set out in the second column of that Schedule;

(h) the places specified in the Eighth Schedule, as sufferance wharves for the purposes and subject to the conditions set out in that Schedule;

(i) the places specified in the second column of the Ninth Schedule, as places for the landing and embarkation of persons within the ports set out in the first column of that Schedule;

(j) the places specified in the second column of the Tenth Schedule, as places for the examination of goods (including baggage) within the ports set out in the first column of that Schedule;

(k) the entrances and exits specified in the second column of the Eleventh Schedule

as entrances and exits to and from the ports set out in the first column of that Schedule;

(l) the roads and routes specified in the Twelfth Schedule as roads or routes over which goods in transit shall be conveyed.

FIRST SCHEDULE

(1) PORTS FOR VESSELS

| Place | <i>Limit</i> |
|-------------------|---|
| <i>Kilifi</i> | The water which lies within an arc of a radius of 400 metres from the Custom House. |
| <i>Kisumu</i> | The water which extends one-quarter of a kilo metre towards the lake from the Wagon Ferry Terminal and the end of the Oil Jetty shown in the Kisumu Station Yard Layout Drawing No. 1710/3 in the office of the Commissioner. |
| Kiunga | The water which lies within an arc of a radius of two kilometres from the Custom House. |
| Lamu | The water which lies within an arc of a radius of two kilometres from the Custom House. |
| Malindi | The water which lies within an arc of a radius of five kilometres to the east and north of the Custom House. |
| Mombasa Kilindini | The water which lies within the imaginary lines A, B, C, and D as defined below - |
| | A - A line drawn on the seaward side joining Ras Kunwongbe to a point on the shore of the mainland 900 metres due south of Kisenge. |
| | B - A line joining the front leading light at Ras Serani and a point 1,275 metres due east of the front leading light at Ras Serani. |
| | C - A line drawn along Kipevu bridge. |
| | D - A line drawn across Port Reitz joining Ras Hodi and a point on the mainland five kilo metres due south of Ras Hodi. |
| Old Port | The water which lies within the imaginery lines A, B, and C as defined below - |
| | A - A line drawn on the seaward side joining Ras Kunwongbe to a point on the shore of the mainland 900 metres due south of Rais |

Kisenge.

B - A line joining the front leading light at Ras Serani and a point 1,273 metres due east from the front leading light at Ras Serani.

C - A line following the alignment of the Old Nyali Bridge.

Mombasa
Mbaraki - - Any place within the limits of the wharf at which the proper officer shall require a cruise ship to brine to.

Shimoni The water which lies within an arc of a radius of 800 metres from the Custom House.

(2) FRONTIER PORTS

Busia The area immediately in front of the Custom House

Garissa The area immediately in front of the Custom House.

Isebania The area immediately in front of the Custom House.

Kiunga The area immediately in front of the Custom House.

Liboi The area immediately in front of the Custom House.

Loitokitok The area immediately in front of the Custom House.

Lokichogio The area immediately in front of the Custom House.

Lunga Lunga The area immediately in front of the Custom House.

Malaba The area immediately in front of the Custom House.

Mandera The area immediately in front of the Custom House.

Moyale The area immediately in front of the Custom House.

Namanga The area immediately in front of the Custom House.

Taveta The area immediately in front of the Custom House.

SECOND SCHEDULE

PLACES AND CUSTOMS AREAS FOR LIMITED PURPOSES

(1) Bonded warehouses licensed under section 51 of the Customs and Excise Act, for warehousing of goods therein.

Cap. 472.

(2) Post Parcels Offices as customs areas for imports, exports and coastwise cargo.

(b) The oil jetty, Shimanzi, distinguished by the letter "Q" in red on Plan No. PEM/211 in the office of the Commissioner. For bulk oil or chemical products only.

(c) The Kipevu oil terminal jetty, Kipevu, distinguished by the letter "R" in red on Plan No. PEM/211 in the office of the Commissioner. For crude, petroleum fuel and residual oils.

(d) The cased oil jetty, Shimanzi, distinguished by the letter "S" in red on Plan No. PEM/121 in the office of the Commissioner. For packed and bulk oil products only.

(e) Mbaraki cement wharf, Mbaraki, distinguished by the letter "A" in red on Plan No. PEM/382 in the office of the Commissioner. For imports and exports in bulk, of cement, clinker, flourspar, molasses and of bagged cement.

(f) Flora Point explosives magazine For explosives only.

(g) The Naval Armament Depot Jetty, Mtongwe, and the area adjacent thereto, delineated in red on Admiralty Plan DRWG No. 40/57 in the office of the Commissioner. For naval stores only.

(h) The Naval Armament Depot Jetty, Mkunguni, and the area adjacent thereto, delineated in red on Admiralty Plan DRWG No. 18/56B in the office of the Commissioner. For naval stores only.

(i) The Mwachi Explosives Jetty distinguished by the letter "A" in red, and the area adjacent thereto on Plan P.780 in the office of the Commissioner. For explosives only.

(j) Liwatoni Fisheries Jetty distinguished by the letter "A" and delineated in red on drawing No. M.6919/24 in the office of the Commissioner. For fish, including fish of Kenya taking.

- Old Port (a) The wharf.. For imports, exports and coastwise cargo.
- (b) The fish jetty For fish of Kenya taking only.
- (c) The cement jetty For cement and empty bags as cargo and bulk oils and lubricants as ship's stores.
- (d) Marine Fisheries Research Institute Jetty, English Point, distinguished by the letter "A" in red on Drawing No. 085/ SS5 in the office of the Commissioner. For fish of Kenya taking only.

Shimoni. The foreshore which lies within an arc of a radius of 180 metres from the Custom House. For imports, exports and coastwise cargo.

(2) FRONTIER PORTS

Busia
Isebania
Kiunga
Liboi
Loitokitok
Lokichogio
Lunga
Lunga
Malaba
Mandera
Moyale
Namanga
Taveta

The area immediately in front of the Custom House. For imports and exports.

(3) CUSTOMS AIRPORTS

Garissa Any place within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the proper officer may permit goods to be loaded and unloaded. For imports, exports and coastwise cargo.

| | |
|---|---|
| Kisumu | Any place within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |
| Lamu | Any place, within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |
| Malindi | Any place, within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |
| Nairobi Jomo Kenyatta International Airport | - Any place, within the customs airport area, as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |
| Wilson Airport | Any place, within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |
| Mombasa - Moi International Airport | Any place, within the customs airport area as specified in the Fourth Schedule, enclosed by the perimeter fence where the For imports, exports proper officer may permit goods to be and coastwise cargo. loaded and unloaded. |

(4) CUSTOMS INLAND PORTS

| | |
|--------------------------------------|--|
| Container Terminal at Embakasi | As the proper officer may indicate within the perimeter fence as defined in Plan No. For imports, exports 98112/52A and in the letter from the and coastwise cargo in Commissioner of Lands Ref. 98112/79 containers only. dated the 3rd November, 1982. |
|--------------------------------------|--|

FOURTH SCHEDULE

CUSTOMS AIRPORT

| <i>Place</i> | <i>Limits</i> |
|--------------|--|
| Garissa | All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation provided that the airport shall be used by aircraft arriving from or departing to foreign airports only when adequate notice has been given to the proper officer and he has signified his prior approval to such arrival or departure and confirmed his ability to attend. |

| | |
|---|--|
| Kisumu | All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation provided that the airport shall be used by aircraft arriving from or departing to foreign airports only when adequate notice has been given to the proper officer and he has signified his prior approval to such arrival or departure and confirmed his ability to attend. |
| Lamu | All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation provided that the airport shall be used by aircraft arriving from or departing to foreign airports only when adequate notice has been given to the proper officer and he has signified his prior approval to such arrival or departure and confirmed his ability to attend. |
| Malindi | All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation provided that the airport shall be used by aircraft arriving from or departing to foreign airports only when adequate notice has been given to the proper officer and he has signified his prior approval to such arrival or departure and confirmed his ability to attend. |
| Mombasa - | Cruise ships berthed alongside at Mbaraki wharf |
| Mbaraki - | The Mbaraki Cement wharf. |
| Mombasa - Moi International Airport | - All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation. |
| Nairobi - Jomo Kenyatta International Airport | - All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation. |
| Wilson Airport | All that area of land, more particularly described in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation. |

FIFTH SCHEDULE

CUSTOMS AIRPORTS FOR LIMITED PURPOSES

| <i>Place</i> | <i>Limits</i> | <i>Purpose</i> |
|--------------|--|---|
| Nakuru | The area of land, more particularly described in the AGA of the Aeronautical Publication issued by the Director of Civil Aviation. | For refuelling only, provided prior approval of the proper officer is obtained. |

SIXTH SCHEDULE

BOARDING STATIONS

(1) AT PORTS FOR VESSELS

| Place | Limits | Purpose |
|-----------|--------|---|
| Kilifi | | Any place within the limits of the port at which the proper officer shall require a vessel to bring to. |
| Kisumu | | |
| Kiunga, | | |
| Lamu | | |
| Malindi | | |
| Mombasa - | | |
| Kilindini | | |
| Old Port | | |
| Shimoni | | |

(2) AT CUSTOMS AIRPORTS

| | | |
|---------------|--|--|
| Garissa | | Any place within limits of the port as specified in the Fourth Schedule at which the proper officer shall require an aircraft to bring to. |
| Kisumu | | |
| Airport | | |
| Lamu | | |
| Malindi | | |
| Mombasa - | | |
| Moi | | |
| International | | |
| Airport | | |
| Nairobi - | | |
| Jomo | | |
| Kenyatta | | |
| International | | |
| Airport | | |
| Wilson | | |
| Airport | | |

SEVENTH SCHEDULE

CUSTOMS AREAS

(1) AT PORTS FOR VESSELS

| | |
|------------------------------|--|
| <i>Kilifi</i> | <p><i>Imports, Exports, and Coastwise Cargo</i></p> <p>The area immediately in front of the Custom House.</p> |
| <i>Kisumu</i> | <p><i>Imports, Exports, and Coastwise Cargo</i></p> <p>The area bounded by the perimeter fence, delineated in red on Drawing No. 1710/3 in the office of the Commissioner but not including any offices, stores, canteens, workshops, garages, public conveniences or any building of any description other than the transit shed and Customs office.</p> |
| <i>Kiunga</i> | <p><i>Imports, Exports, and Coastwise Cargo</i></p> <p>The area immediately in front of the Custom House.</p> |
| <i>Lamu</i> | <p><i>Imports, Exports, and Coastwise Cargo</i></p> <p>(a) Godowns Nos. 1 and 2 adjoining the Custom House and godown No. 3 situated on the ground floor of the Custom House.</p> <p>(b) The go-down office and store, situated on the ground floor of the District Court.</p> <p>(c) The fenced yard between the Custom House and the District Court.</p> |
| <i>Malindi</i> | <p><i>Imports, Exports, and Coastwise Cargo</i></p> <p>The transit shed situated adjacent to and to the south Custom House.</p> |
| <i>Mombasa Kilindini</i> | <p>- <i>Imports, Exports, and Coastwise Cargo</i></p> <p>The area bounded by the wharf and the pert perimeter fence, delineated in red on Plan No. PEM/211 in the office of the Commissioner, but not including any offices, stores, canteens, workshops, garages, public conveniences or any building of any description other than transit sheds Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, BP 1, BP 2, BP 3, BP 4, SL 1, SL 2, the magadi sheds, the film and dangerous cargo stores, the cask guaging shed, the customs warehouse, the refrigerated cargo store adjoining the south end of transit shed No. 5, the cold store and the customs examination enclosures and lockers.</p> <p><i>All fish, including fish of Kenya taking</i></p> <p>The area at Liwatoni fisheries jetty delineated in red on Drawing No. M. 6919/24 in the office of the Commissioner.</p> <p><i>Cement, Clinker, Coal, Flourspar and Molasses</i></p> <p>Mbaraki cement wharf delineated in red on Plan No. PEM/382 in the office of the Commissioner.</p> |
| Admiralty | <p>(a) The Naval Armament Depot Jetty, Mtongwe, and the area adjacent thereto,</p> |

Stores delineated in red on Admiralty Plan No. DRG 40/57 in the office of the Commissioner.

(b) The Naval Armament Depot Jetty, Mkunguni, and the area adjacent thereto, delineated in red on Admiralty Plan No. 18/56B in the office of the Commissioner.

Bunkering Facilities - Duty Paid Products Only

The "K" Boat Jetty on the foreshore between Mbaraki Creek and Liwatoni Bay marked "A" and delineated in green on Admiralty Chart No. 666 in the office of the Commissioner.

Imports, Exports, and Coastwise Movement of Explosives Only

Mwachi Explosives Jetty marked "A" and the area adjacent thereto, delineated in red on Plan P. 780 in the office of the Commissioner.

Imports, Exports, and Coastwise Cargo

The area bounded on the north-east by the waterside, on the south-east by the port area fence and the end wall of the open-sided shed known as the "Umbrella Shed" and the main transit shed, and on the north-west by the wall of the main transit shed and an imaginary line drawn in continuation thereof to the water-side excluding the offices above the main transit shed and any public convenience.

The area at English Point on the north mainland comprising the cement jetty, cement silos, bulk oil tanks, pipelines, and offices, the whole area being delineated in red on Plan No. S. 1045 in the office of the Commissioner.

The Marine Fisheries Research Institute jetty, English Point, distinguished by the letter "A" and delineated in red on Drawing No. 085/SS5 in the office of the Commissioner.

Imports, Exports, and Coastwise Cargo

Shimoni The area immediately in front of Custom House.

(2) AT FRONTIER PORTS

Busia *Imports* *and* *Exports*
The area immediately in front of the Customs House.

Isebania

Kilinga

Liboi

Loitokitok

Lokichogio

Lunga Lunga

Malaba

Mandera

Moyale

Namanga

Taveta

(3) AT CUSTOMS AIRPORT

Garissa

Imports, Exports, and Coastwise Cargo

All that area of land commonly known as the "airport" maintained for and in use by aircraft and which is within the customs airport, Garissa.

Kisumu

Imports, Exports, and Coastwise Cargo

(a) The area enclosed by the airport perimeter fence and which is within the customs airport, Kisumu.

(b) The lock-up marked "Airfreight Transit Shed".

Lamu

Imports, Exports, and Coastwise Cargo

All that area of land commonly known as the "airport" maintained for and in use by aircraft and which is within the customs airport, Lamu, specified in the Fourth Schedule.

Malindi

Imports, Exports, and Coastwise Cargo

All that area of land commonly known as the "airport" maintained for and in use by aircraft and which is within the customs airport, Malindi, specified in the Fourth Schedule.

Mombasa -

Imports, Exports, and Coastwise Cargo

Moi International Airport

The baggage hall and that portion of the airport terminal building operated by the Kenya Airways Limited and marked "Air Freight Transit Shed" within the Moi International customs airport specified in the Fourth Schedule.

Nairobi -

Imports, Exports, and Coastwise Cargo

Jomo Kenyatta International Airport

The area within the Jomo Kenyatta International customs airport as defined in the Fourth Schedule including all buildings, enclosed by the airport security fence, the perimeter fence to the east of the airport terminal buildings and the main control tower and the main runway to the north of the airport apron but not including canteens, workshops, garages and public conveniences.

Wilson Airport

Imports, Exports, and Coastwise Cargo

The area within the Customs Wilson Airport as defined in the Fourth Schedule, enclosed by the airport perimeter fence and which is within the Customs Wilson Airport.

(4) CUSTOMS INLAND PORTS

Container Terminal, Embakasi

The area enclosed by the perimeter fence as and defined in Plan No. 98112/52A and in the letter from the Commissioner of Lands Ref. 98112/79 dated 3rd November, 1982.

EIGHTH SCHEDULE

SUFFERANCE WHARVES FOR VESSELS

A. For loading of cattle, sheep, and goats subject to the condition that vessels shall report to the proper officer at Lamu before proceeding to load and prior to departure coastwise -

Port *Sufferance Wharf*

Lamu The Mkowe passenger jetty in Kipungani Creek.

B. (i) For unloading of cattle, sheep, and goats, subject to the condition that vessels shall report to the proper officer at Mombasa Old Port before proceeding to unload and prior to departure coastwise.

(ii) For loading beer by the Kenya Breweries Limited, Mombasa, subject to the condition that vessels shall report to the proper officer at Mombasa Old Port before proceeding to load and prior to departure coastwise.

Mombasa Old Port - The Kenya Meat Commission jetty adjacent to the Kenya Meat Commission in Tudor Creek.

C. For loading and unloading of marine, oil exploration, and salvage machinery and equipment, and such other goods as the Commissioner may specially allow, subject to the condition that the proper officer at Kilindini Port shall be notified prior to the loading and unloading -

Port *Sufferance Wharf*

Mombasa - The Diving Contractors Limited (DIVECON) jetty at Liwatoni, delineated in red on Kilindini Port location and site Plan No. 90/82/2A in the office of the Commissioner.

NINTH SCHEDULE**PLACES FOR THE LANDING AND EMBARKATION OF PERSONS****(1) AT PORTS FOR VESSELS**

Kilifi The foreshore which lies 45 metres on either side of the foot of the steps leading to the Custom House.

Kisumu The main jetty, the wagon ferry terminal jetty and the oil jetty distinguished by the letters "A" "B" and "C" on Drawing No. 1710/3 in the office of the Commissioner.

Kiunga The foreshore which lies within the port area:

(a) The jetty.

(b) The foreshore which lies 70 metres on either side of the jetty.

Malindi The jetty.

Mombasa - *Vessels berthed alongside the Main Wharf*

| | |
|-----------|--|
| Kilindini | <p>The main wharf, the oil jetties at Shimanzi and Kipevu and the cased oil jetty.</p> <p><i>Vessels berthed alongside Mbaraki</i></p> <p>The Mbaraki cement wharf, after the completion of all customs formalities.</p> <p><i>Vessels berthed alongside Liwatoni</i></p> <p>The Liwatoni fisheries jetty, after the completion of all customs formalities.</p> <p><i>Vessels lying at anchor in the Port</i></p> <p>- Fire station pontoon.</p> <p>- No. 6 landing pontoon adjacent to the north end of Transit Shed No. 5.</p> <p><i>Kenya Navy Vessels or Vessels on Charter to Kenya Navy</i></p> <p>(a) The Naval Armament Depot Jetty, Mtongwe, marked "A" on Admiralty Plan DRWG No. 40/57 in the office of the Commissioner, for persons concerned with the working of these vessels.</p> <p>(b) The Naval Armament Depot Jetty, Mkunguni, marked "A" on Admiralty Plan DRWG. No. 18/56B, in the office of the Commissioner, for persons concerned with the working of these vessels.</p> <p><i>Naval and other craft travelling directly between Kilindini port and the Naval Armament Depot Jetties</i></p> <p>(a) The Naval Armament Depot Jetty, Mtongwe, marked "A" on Admiralty Plan DRWG. No. 40/57 in the office of the Commissioner, for naval personnel and their families and for such other persons as the proper officer may either generally or specially allow.</p> <p>(b) The Naval Armament Depot Jetty, Mkunguni, marked "A" on Admiralty Plan DRWG. No. 18/56B in the office of the Commissioner, for naval personnel and their families and for such other persons as the proper officer may either generally or specially allow.</p> <p>(c) The fire station pontoon.</p> <p><i>Vessels and lighters berthed alongside the Explosive Jetty</i></p> <p>Mwachi Explosive Jetty, marked "A" and the area adjacent thereto, delineated in red on Plan P. 780 in the office of the Commissioner.</p> |
| Old Port | <p><i>Vessels berthed alongside the wharf or lying at anchor in the Port.</i></p> <p>The wharf.</p> <p><i>Vessels berthed at the Cement Jetty, English Point</i></p> <p>The cement jetty, after the completion of all customs formalities.</p> <p><i>Vessels berthed at Marine Fisheries Research Institute Jetty, English Point</i></p> <p>The Marine Fisheries Research Institute jetty, after the completion of all customs formalities.</p> |

Shimoni The foreshore which lies within an arc of a radius of 180 metres from the Custom House.

(2) AT CUSTOMS AIRPORTS

Kisumu Lamu The Customs examination area or the baggage hall of the terminal units at the airport terminal building at each customs airport specified in the Fourth Schedule to this
Malindi
Mombasa - Notice.

Moi
International
Airport
Nairobi - Jomo
Kenyatta
International
Airport Wilson
Airport

TENTH SCHEDULE

PLACES FOR THE EXAMINATION OF GOODS (INCLUDING BAGGAGE)

(1) AT PORTS FOR VESSELS

Kilifi The Custom House.

Kisumu The customs office distinguished by the letter "D" and the transit shed marked "E" on Drawing No. 1710/3 in the office of the Commissioner and such other place at which the proper officer may require goods (including baggage) to be produced for examination.

Kiunga The foreshore, which lies within the port area, and the Custom House.

Goods and Baggage

Lamu (a) Sheds Nos. 1 and 2 adjoining the Custom House.

(b) Shed No. 3 situated on the ground floor of the Custom House.

Malindi *Goods and Baggage*

The transit shed situated adjacent to and to the south of the Custom House.

Mombasa - *Goods*

Kilindini (a) The customs examination enclosure between transit shed Nos. 1 and 2 marked "A" and coloured red on Plan No. PEM/211 in the office of the Commissioner.

(b) The customs examination shed at the north end of transit shed Nos. 3 and 4 marked "B" and coloured red on Plan No. PEM/211 in the office of the Commissioner.

(c) The customs examination enclosure within transit shed No. 5 marked "C" and coloured red on Plan No. PEM/211 in the office of the Commissioner.

(d) The customs examination enclosure in transit sheds Nos. 7 and 8 marked "D" in red on plan No. PEM/211 in the office of the Commissioner.

(e) The customs examination enclosure in transit sheds Nos. 9 and 10 marked "E" in red on Plan No. PEM/211 in the office of the Commissioner.

(f) The customs examination enclosure in transit shed No. 11 marked "F" in red on Plan No. PEM/211 in the office of the Commissioner.

(g) The customs examination enclosure in transit shed No. 12 marked "G" in red on Plan No. PEM/211 in the office of the Commissioner.

(h) The customs examination enclosure in transit shed No. 13/4 marked "H" in red on Plan No. PEM/211 in the office of the Commissioner.

(i) The customs examination enclosure in transit sheds Nos. 16 and 17 marked "J" in red on Plan No. PEM/211 in the office of the Commissioner.

(j) The customs examination enclosure in ARCON shed marked "K" in red on Plan No. PEM/211 in the office of the Commissioner.

(k) The customs examination enclosure in transit shed at South Lighter Wharf marked "L" in red on Plan PEM/211 in the office of the Commissioner.

(l) The customs examination enclosure in transit shed at North Lighter Wharf marked "M" in red on Plan-No. PEM/211 in the office of the Commissioner.

(m) The customs examination enclosure in transit shed BP. 2 marked "O" in red on Plan No. PEM/211 in the office of the Commissioner.

(n) The customs cask gauging shed, marked "N" in red on Plan No. PEM/211 in the office of the Commissioner.

(o) The customs warehouse marked "P" in red on Plan No. PEM/211 in the office of the Commissioner.

(p) The cold store at Kenya Fishing Industries Liwatoni, marked "B" in red on Drawing No. M. 6916/24 in the office of the Commissioner.

(q) Mbaraki cement wharf delineated in red on Plan No. PEM/382 in the office of the Commissioner.

(r) Such other place at which the proper officer may require goods to be produced for examination.

Baggage, subject to such conditions as the proper officer may either generally or specially specify -

(a) The baggage shed, marked "T" in red on Plan No. PEM/211 in the office of the Commissioner.

(b) Such other place at which the proper officer may require baggage to be produced for examination.

Old Port

Goods

(a) Transit sheds Nos. 1, 2 and 3 situated on the ground floor of the Custom House.

(b) The open-sided shed known as the "Umbrella Shed".

Baggage

(a) The baggage shed adjoining the Custom House.

(b) Such other place at which the proper officer may require baggage to be produced for examination.

(c) The cement jetty and area delineated in red on Plan No. S. 1045 in the office of the Commissioner.

Shimoni

Goods and Baggage

The Custom House.

(2) AT FRONTIER PORTS

Malindi Such place at which the proper officer may require goods or baggage to be produced for examination within the Customs Airport, Malindi, specified in the Fourth Schedule to this Notice.

Goods and Baggage

Lamu Such place at which the proper officer may require goods or baggage to be produced for examination within the customs airport, Lamu, specified in the Fourth Schedule to this Notice.

Goods and Baggage

Mombasa - The portion of the airport terminal building operated by the Kenya Airways Limited
Moi and marked "Air Freight Shed".
International
Airport

Baggage

The baggage hall in the airport terminal building within the Moi International customs airport, Mombasa, specified in the Fourth Schedule.

Goods and Baggage

Nairobi - Such place at which the proper officer may require goods and baggage to be produced
Wilson for examination within the customs Wilson Airport, Nairobi,
Airport as specified in the Fourth Schedule.

Goods

Jomo (a) The customs examination room in the freight shed.
Kenyatta (b) Such other place at which the proper officer may require goods to be produced for
Airport examination within the Jomo Kenyatta International customs airport, Nairobi, specified
in the Fourth Schedule.

ELEVENTH SCHEDULE

**ENTRANCES AND EXITS TO AND FROM CUSTOMS AREAS
OR CUSTOMS AIRPORTS**

(1) AT PORTS FOR VESSELS

Kisumu The Main Gate No. 1, so distinguished by the the red figure on Drawing No. 1710/3 in the office of the Commissioner.

Mombasa- *General - persons and cargo (other than import cargo) by road traffic*

Kilindini At the foot of Moi Avenue, Gates Nos. 8 and 9, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

General - persons and cargo (other than import cargo) by road and rail traffic

Adjoining the entrance 10 the Dockyard Gates Nos. 2 and 3, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

General - persons and cargo by road traffic

At the foot of Moi Avenue, Gate No. 10, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

General - persons and import and export cargo by road traffic

(a) Adjoining the labour compound and leading to Shimanzi Road, Gate No. 12, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

(b) Leading to Changamwe, Gate No. 18, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

(c) Leading to Changamwe, Gate No. 19, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

Special-cargo (other than Import cargo) by road traffic

Leading to Moi Avenue, Gate No. 6, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

Special - for Port (Dockyard) employees only

Gate No. 1, being the entrance to the Dockyard so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

Special - cargo by rail

(a) Adjoining the foot of Moi Avenue, Gate No. 11 so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

(b) Abutting upon the Kenya Shell installation, Shimanzi, Gate No. 13, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

(c) Leading to Shimanzi oil sidings, Gate No. 14, so distinguished in the figures on Plan No. PEM/211 in the office of the Commissioner.

(d) Leading to Changamwe, Gate No. 20, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

Special - Port construction materials by road

Adjacent to Kipevu Tank Farm, Gate No. 21, so distinguished by the figures on Plan No. PEM/211 in the office of the Commissioner.

Special - Kenya Power and Lighting Co. employees on electrical maintenance duty

only.

Leading to the Kenya Power and Lighting Company's station at Kipevu, Gate No. 17, so distinguished by figure on Plan No. PEM/211 in the office of the Commissioner.

Special - East African Oil Refineries employees only

Leading to Refineries Kipevu Tank Farm, Gate No. 22, so distinguished by the red figures on Plan No. PEM/211 in the office of the Commissioner.

Special - Explosives only

The main gate in the security fence surrounding the Mwachi Explosives Jetty Terminal.

Mbaraki Cement Wharf

In the area surrounded by the security fence surrounding Mbaraki Cement Wharf, Gates Marked M1, M2 and M3 in red on Drawing No. PEM/382 in the office of the Commissioner.

Liwatoni Fisheries Jetty

The main gate leading to the jetty, so marked in red on Drawing No. M 6&19/24 in the office of the Commissioner.

Special. - Naval Stores, Naval Personnel and their families and. such other persons as the proper officer may either generally or specifically allow.

(a) At the Naval Armament Depot, Mtongwe, the gate distinguished by the letter "B" on Admiralty Plan DRWG. No. 40/57 in the office of the Commissioner.

(b) At the Naval Armament Depot, Mkunguni, the gate distinguished by the letter "B" on Admiralty Plan DRWG. No. 18/56B in the office of the Commissioner.

Old Port

General. - Persons and Cargo

The main gate leading on the Treasury Square, Mombasa.

Special. - Export Cargo

The wooden gate adjacent to the main gate leading on to Treasury Square, Mombasa.

Special. – Cement

The main entrance to the cement silos coloured blue on Plan No. F. 12/ARCH/1/A in the office of the Commissioner.

(2) AT CUSTOMS AIRPORTS

Kisumu

Mombasa

Moi

International

Airport

Nairobi

- The entrances and exits to and from the airport more particularly specified in the AGA Section of the Aeronautical Publication issued by the Director of Civil Aviation.

- The entrances and exits to and from the airport more particularly specified in the AGA

- Jomo International Airport section of the Aeronautical Publication issued by the Director of Civil Aviation
- General*
- (a) The entrances and exits to and from the terminal building on the road to the airport from the Airport South Road and the Mombasa-Nairobi Road.
- (b) The entrances leading from the Airport South Road to the freight section.
- For General Service Unit Personnel*
- The eastern gate near the main control tower.
- General*
- Nairobi Wilson Airport - The entrances and exits to and from the airport more particularly specified in the AGA section of the Aeronautical Publication issued by the Director of Civil Aviation.
- (3) CUSTOMS INLAND PORTS
- Container Terminal Embakasi. The entrances and exits as specified in Plan No. 98112/52A and the letter from the Commissioner of Lands Ref. 98112/79 dated the 3rd November, 1982.

TWELFTH SCHEDULE

ROADS OR ROUTES OVER WHICH GOODS IN TRANSIT SHALL BE CONVEYED

Goods in transit may only be conveyed over roads or routes specified in this Schedule and the goods must enter or leave Kenya through a port or customs airport appointed under the First Schedule -

1. National and International Trunk Roads as shown on the Map of Kenya No. SK 81 KENYA (Second Edition) in the office of the Commissioner:

(a) International Trunk Roads A 109 and A 104, joining Mombasa - Nairobi - Naivasha - Nakuru - Eldoret - Malaba.

(b) International Trunk Road . A 14, joining Mombasa - Lunga Lunga.

(c) International Trunk Roads A 109 and A 23, joining Mombasa - Voi - Taveta.

(d) National and International Trunk Roads B8 and A3, joining Mombasa - Malindi - Garissa - Liboi.

- (e) International Trunk Road A1, joining Kisii - Migori - Isebania.
 - (f) International Trunk Road A2, joining, Nairobi - Nanyuki - Isiolo - Marsabit - Moyale.
 - (g) International Trunk Road joining Lodwar - Kakuma - Lokichogio.
 - (h) International Trunk Roads A2 and A3, joining, Nairobi - Thika - Garissa - Liboi.
 - (i) International Trunk Roads A109 and A104, joining Nairobi - Athi River - Namanga.
 - (j) National and International Trunk Roads A104, B1 and A1, joining Nakuru - Kericho - Kisumu. Yala - Busia. joining Garissa-
 - (k) National Trunk Road joining Garissa - Wajir - Mandera.
 - (l) National Trunk Road C102, joining Nairobi-Sultan Hamud - Loitokitok.
 - (m) National Trunk Road C103, joining Nairobi - Namanga - Loitokitok.
2. The following routes operated by Kenya Rail-ways Corporation:
- (a) Mombasa - Voi - Nairobi - Nakuru - Londiani - Kisumu.
 - (b) Nakuru - Eldoret - Malaba.
 - (c) Voi - Taveta.

[Subsidiary]

Regulations Under section 234

THE CUSTOMS AND EXCISE REGULATIONS

Arrangement of Regulations

PART 1-PRELIMINARY

1. Citation
2. Interpretation

PART II – ADMINISTRATION

3. Working days and hours
4. Application for services outside hours of general attendance
5. Overtime fees
6. Division of charge
7. Fees for cautionary visits
8. Fees to be paid to revenue
9. Remuneration to officers

PART III – IMPORTATION

Arrival and Report of Aircraft and Vessels

10. Report of vessels
11. Report of aircraft and cargo
12. Initialing of pages
13. Report of stores, crew's declaration and list of passengers
14. Arrival at two or more ports
15. Vessels, etc., in ballast
16. Description of cargo on reports
17. Weight or measurement of cargo to be reported
18. Reporting cargo for other ports in Kenya
19. Cargo remaining on board
20. Bulk not to be broken before report
21. Stores to be produced
22. Duty free allowance of stores to crew
23. Rummaging of vessels and aircraft
24. Amending inward reports
25. Conditions precedent to amendment of report
26. Aircraft or vessels landing or bring to owing to accident, etc.

Arrival Overland

27. Importation by overland routes

Unloading and Removal of Goods

- 28. Sufferance wharves and unapproved places
- 29. Accommodation and transport to be provided
- 30. Goods not to be unloaded at a sufferance wharf until entered
- 31. Boat or tally note
- 32. Permission to leave place of unloading
- 33. Transit sheds
- 34. Access to transit sheds
- 35. Permit to re-land goods
- 36. Certificate of landing

Entry, Examination and Delivery of Goods

- 37. Forms of entry
- 38. Particulars to be declared on Forms
- 39. Reference to be made on all entries for contents of same packages
- 40. Imported goods to be entered within 21 days of commencement of discharge on arrival
- 41. Landing of surplus goods
- 42. Disembarkation of persons
- 43. Access to baggage room
- 44. Baggage to be taken to examination place
- 45. Baggage declaration
- 46. Baggage examination
- 47. Firearms and ammunition
- 48. Unclaimed baggage
- 49. Unaccompanied baggage declaration
- 50. Goods delivered in special circumstances
- 51. Importer to provide special implements for examination
- 52. Packages found partly empty
- 53. Packing of goods imported in bulk
- 54. Goods may be examined at private premises
- 55. Entry not required for goods, etc., imported for temporary use
- 56. Removal coastwise of imported goods

Provisions relating to Customs Warehouses

- 57. Customs warehouse rent
- 58. Commissioner may waive rent
- 59. Rent to be paid before delivery
- 60. Customs houses deemed to be customs warehouses

PART IV-WAREHOUSING OF GOODS*Provision Relating to Bonded Warehouses*

- 61. Goods not to be warehoused
- 62. Owner to keep packages in repair
- 63. Goods refused for warehousing
- 64. Entries for warehoused goods
- 65. Owner to furnish bond
- 66. Acceptance by warehouse keeper
- 67. Conditions of re-packaging in warehouse

- 68. Transfer of ownership of goods
- 69. Time during which goods may be warehouse
- 70. Goods to be consigned to the proper officer
- 71. Treatment of warehoused and re-warehoused goods on arrival
- 72. Licence for bonded warehouse
- 73. Bonded warehouse fees
- 74. Bonds for bonded warehouses
- 75. Alterations to bonded warehouses
- 76. Death of licensee to be reported
- 77. Bonded warehouses to be numbered

Provisions Relating to Government Warehouses

- 78. Rent charges in Government warehouses
- 79. Goods to be removed when Government warehouse closed

PART IV A – MANUFACTURE UNDER BOND

- 79A. Provisions relating to manufacture of goods for export under bond
- 79B. Provisions relating to bonded factories
- 79C. Manufactured goods to be entered on register
- 79D. Manner of dealing with wastes and rejects
- 79E. Entry of manufactured goods
- 79F. Treatment of manufactured goods on exportation
- 79F. Certificates of export to be obtained
- 79H. Entry for home use

PART V – EXPORTATION

Entry Outwards and Loading of Aircraft and Vessels

- 80. Entry outwards
- 81. Entry for exportation
- 82. Sufferance wharves and unapproved places
- 83. Accommodation and transport to be provided
- 84. Goods not to be loaded at sufferance wharf until entered
- 85. Master to submit passenger list
- 86. Shipment before entry
- 87. Cargo landed in error
- 88. Shipment of duty paid and free stores
- 89. Shipment of drawback and dutiable stores
- 90. Transfer of stores
- 91. Transfer bond
- 92. Conditions of loading or transfer of stores
- 93. Production of stores before shipment
- 94. Conditions under which goods deemed to be put on board

Departure Overland

- 95. Exportation by overland routes

Goods in Transit or for Transshipment

- 96. Goods in transit
- 96A. Goods in transit to or from a Northern Corridor state
- 97. Entry and bond for transshipment
- 98. Transshipment direct

PART VI – IMPORTATION AND EXPORTATION BY POST

- 99. Commissioner may waive entries for goods imported by post
- 100. Customs declaration on postal articles
- 101. Production of postal articles
- 102. Detention of postal articles
- 103. Uncleared postal articles
- 104. Duties to be paid to the customs

PART VII DEPARTURE AND CLEARANCE OF AIRCRAFT AND VESSELS

- 105. Form of clearance of vessel
- 106. Outward manifest of vessel
- 107. Clearance and general declaration for aircraft
- 108. Shipments short or in excess of manifest
- 109. Separate manifest for each port

PART VIII – CARRIAGE OF GOODS COASTWISE

- 110. Coastwise clearance and transpire
- 111. Separate transpires for each port
- 112. Unloading and examination of coastwise cargo
- 113. Sufferance wharves unapproved places
- 114. Accommodation and transport to be provided
- 115. Transpire to be delivered before loading or unloading
- 116. Amendment of transpire
- 117. General transpires
- 118. Pass note for duty paid goods carried coastwise

PART IX – REGISTERED USERS

- 119. Application for registration
- 120. Acceptance of registration
- 121. Validity of registration
- 122. Storage and use
- 123. Registered user's stock book
- 124. Monthly returns
- 125. Manufacturing operations
- 126. Books, documents etc
- 127. Commissioner may dispense with certain requirements
- 127A. Control of goods entering the export processing zone
- 127B. Specification for vans transporting dutiable goods
- 127C. Transportation of small package and boxes

PART X – CONTROL OF MANUFACTURE OF EXCISABLE GOODS OTHER THAN SPIRITS*Licensing of Premises and Plant*

- 128. Application for licence to manufacture
- 129. Transfer of licence
- 130. Entry of premises and plant
- 130A. Definition of licensee

Provisions Relating to the Manufacture of Beer

- 131. Brewing book
- 132. Declaration of brands of beer
- 133. Production accounts
- 134. Determination of original gravity
- 135. Removal of beer in bulk
- 136. Bond security
- 137. Monthly excise account

Provisions Relating to the Manufacture of Excisable Goods Under this Part Other than Beer

- 138. Container for cigarettes and manufactured tobacco
- 139. Stock book
- 140. Declaration of brands of manufactured tobacco
- 141. Conditions affecting containers of manufactured tobacco
- 142. Declaration of brands of cigarettes
- 143. Packing and offering for sale of cigarettes
- 144. Cigarettes for export
- 145. Conditions affecting containers of cigarettes
- 146. Materials account
- 147. Conditions affecting removal of containers of excisable goods to or from stock room
- 147A. Packing and making of wine
- 148. Conditions for manufacture of matches
- 147A. Making of packages containing matches
- 148B. Provisions of secure compartment for matches
- 148B. Making of packages containing matches
- 148C. Offences

Provisions Relating to all Excisable Goods Manufactured Under this Part

- 149. Marking of excisable goods
- 150. Delivery of certain excisable goods from stock room

PART XI – DISTILLATION, COMPOUNDING, RECTIFICATION AND DENATURING OF SPIRITS*General Provisions*

- 151. Application for licence
- 152. Approval of processes
- 153. Approval of entry of premises

- 154. Renewal of licence
- 155. Transfer of licence
- 156. Distiller who is rectifier or denaturer
- 157. Placing of vessels and utensils
- 158. Securing of premises and plant
- 159. Restriction on variation of process and alteration of plant
- 160. Plant not to be so made as to permit us in manner other than as approved

Distillers

- 161. Placing of vessels and pipes; painting of pipes
- 162. Restriction on use and possession of certain materials
- 163. Conditions governing removal of sugar and molasses from store
- 164. Distiller to give notice of intention to brew wort
- 165. Distilling periods
- 166. Distiller to give notice of intention to mash or brew
- 167. Distiller to make declaration on completing collection of wort
- 168. Restriction on addition of yeast, etc., to wort or wash
- 169. Distiller to give notice before making bub, etc.
- 170. Distiller to make declaration before removing wash from a fermenting back
- 171. Conditions governing mixing of wort or wash
- 172. Restriction on disposing of wash
- 173. Distiller not to possess certain wort or wash
- 174. Ascertainment of gravity of wort or wash
- 175. Conditions governing disposal of feints, etc.
- 176. Distiller to furnish return at end of distilling period
- 177. Removal and warehousing of spirits
- 178. Receivers or vats used for storage of certain spirits
- 179. Delivery of spirits from a distillery
- 180. Racking of spirits
- 181. Control applied to distiller's warehouse
- 182. Distiller to empty worm tubs, etc., for examination
- 183. Removal of spirits to another distillery
- 184. Prohibition of return of spirits to distillery
- 185. Application of certain regulations to spirits manufactured other than by distillation of a fermented liquor

Rectifiers

- 186. Restriction on rectifier
- 187. Rectifier ceasing to carry on trade
- 188. Marking of casks and containers
- 189. Locking of still or steam pipe
- 190. Unlocking of still
- 191. Further notice of readiness for locking of still
- 192. Charging of still
- 193. Time within which still to be worked off
- 194. Restrictions on working of still
- 195. Hours when still not to be used
- 196. Rectifier to permit officer to sample contents of still
- 197. Conditions governing receipt of spirits
- 198. Notice of intention to deposit spirits in bonded warehouse
- 199. Rectifier to permit officer to take account of spirits in stock; stock book
- 200. Power of Commissioner to specify vessels, etc., to ensure excise control and records to be kept

Denaturers

- 201. Restrictions on spirits for denaturing
- 202. Denaturer ceasing to carry on trade
- 203. Substances and formula for denaturing
- 204. Denaturants to conform to conditions
- 205. Mixing rooms
- 206. Store rooms
- 207. Conveying of spirits for denaturing
- 208. Interference with spirits conveyed for denaturing
- 209. Placing of spirits in vat or tank
- 210. Approval of proper officer to denaturing operation
- 211. Placing of denaturants in mixing vat
- 212. Prohibition on adding substances other than denaturants
- 213. Storage of denaturants
- 214. Account of spirits to be kept by denaturer

Stills

- 215. Permission to keep or use stills
- 216. Disposal of stills
- 217. Glass flasks and containers

Ascertainment of the Strength of Spirits

- 218. Strength of spirits
- 219. Ascertainment by weight, measure of gauge
- 220. Interpretation and application to denatured sprits and fermented liquor

PART XII - DUTIES

Payment

- 221. Payment of duties

Goods Imported for Temporary Use or Purpose

- 222. Goods imported for temporary use
- 223. Commercial travellers' samples and goods imported for temporary use
- 224. Temporary importation of vehicles, etc.
- 225. Procedure when temporary importation papers are not produced
- 225A. Vehicles from Uganda, Tanzania, Sudan, Somalia, Ethiopia or any other country with which Kenya has a bilateral agreement
- 226. Restrictions on user of vehicles temporarily imported

Payments of and Security for Excise Duty on Spirits

- 227. Remittance of excise duty on spirits and declaration
- 228. Secured gross accounts
- 229. Delivery of spirits without payment of duty
- 230. Delivery of spirits for denaturing

Drawback, Remission, Rebate and Refund of Import Duty, Suspended Duty or Dumping Duty

- 231. Basis of drawback
- 232. Conditions of granting drawback
- 233. When drawback is not payable
- 234. Remission of refund of duty on abandoned goods
- 235. Remission of duty on goods lost or destroyed by accident
- 236. Rebate of duty on damaged goods
- 237. Refund where goods returned to seller
- 238. Refund of duty on damaged, pillage or destroyed goods
- 239. Refund of duty to registered user
- 240. Remission of duty on imports for use in the production of exports duty free or specified duty exempt goods

Remission, Refund and Rebate of Excise Duty on Excisable Goods other than Spirits

- 241. Remission, rebate or refund to privileged persons
- 242. Excisable goods destroyed by fire or unavoidable cause
- 243. Excise goods destroyed under supervision
- 244. Remission or refund on exportation or shipment as stores
- 245. Refund of duty on excisable goods other than spirits paid in error
- 246. Deleted by L.N.252/1991 s.13
- 247. Deleted by L.N.252/1991 s.13
- 248. Deleted by L.N.252/1991 s.13
- 249. Deleted by L.N.252/1991 s.13

Remission, Refund and Rebate of Excise Duty on Spirits

- 250. Remission of duty on spirits, etc., accidentally destroyed
- 251. Remission of duty when spirits, etc., destroyed under supervision
- 252. Remission of duty on spirits shipped as stores
- 253. Refund of duty on spirits deposited in bonded warehouse
- 254. Refund of duty paid on spirits delivered duty free or at a reduced rate
- 255. Refund of duty paid in error on spirits
- 256. Marking of containers of spirits for export or shipment

Inspeciton of Books, etc

- 257. Inspection of books, etc

PART XIII – CUSTOMS AND EXCISE AGENTS

- 258. Application for a licence
- 259. Fee to be paid and security furnished
- 260. Expiry of licences
- 261. Penalty for acting without licence
- 262. Suspension, etc., of licences

PART XIV – SETTLEMENT OF CASES BY THE COMMISSIONER

- 263. Request to Commissioner

PART XV – MISCELLANEOUS

- 264. Declaration to be made and particulars to be supplied
- 265. Production of books of account and other documents
- 266. General bonds
- 267. Seizure notice
- 268. Particulars on forms or other documents
- 269. Incorrect form may not be accepted
- 270. Persons requiring copy of entry
- 271. Amendment of forms
- 272. Samples
- 273. Notice of sale
- 274. Conditions of sale
- 275. Allowance in lieu of food to officers stationed on vessels
- 276. Licensed vessels, aircraft and vehicles
- 277. Penalty
- 278. Fees for services to the public

Schedules

Eighth Schedule - Conditions to be met by applicants for a customs agents licence

THE CUSTOMS AND EXCISE REGULATIONS

Citation. 1. These Regulations may be cited as the Customs and Excise Regulation.

Interpretation. 2. In these Regulations -

"Form" means a form set out in the First Schedule;

"registered premises" means premises which have been approved and registered by the Commissioner in accordance with regulation 120;

"registered user" means a person using goods at registered premises who has been registered in accordance with regulation 120 and who is the subject of an order made under section 145 of the Act.

PART II - ADMINISTRATION

Working days and hours. 3. (1) The working days and hours of general attendance of officers shall be such as may be determined by the Commissioner;

(3) The proper officer may grant applications for the attendance of officers on Saturdays, Sundays and public holidays or before or after the hours of general attendance on any working day.

(4) The Commissioner may, by notice exhibited at any port or place, vary the hours of general attendance of officers at that port or place in order to meet the convenience of the public or the exigencies of the customs.

Application for services outside hours of general attendance. C.1. 4. (1) Except in the case of a person arriving in, or departing from, Kenya, overland or by inland waters, applications for services of an officer outside the hours of general attendance shall be made in writing to the proper officer in Form C.1, which shall be submitted to him at least twenty-four hours before the services are required, unless the proper officer in any special circumstances otherwise allows.

(2) Every application shall set out the nature and probable duration of the services required, and shall contain an undertaking to pay all overtime fees which may be incurred, unless the proper officer requires the applicant to deposit with him in advance a sum sufficient to cover the fees.

Overtime fees. , L.N 69/1998,L.N.91/2001 L.N.91/2001 L.N. 48/2004

5. (1) The following fees shall be payable per vehicle at a customs and frontier stations by a person applying for the services of an officer outside the hours of general attendance, for the purpose of dealing with any vehicle carrying passengers and their personal baggage -

(a) motor vehicles for the transport of less than ten persons including the driver Ksh.200.00;

(b) motor vehicles for the transport of ten or more persons but not more than twenty-five persons.... Ksh.400.00

(c) motor vehicles for the transport of over twenty-five persons Ksh.800.00

Provided that no fees shall be payable under this paragraph in respect of motor vehicles registered in Kenya, the Republic of Uganda or the United Republic of Tanzania.

(2) Rates Per hour

Shs

Subordinate Officers of the Customs Prevention service.....200

Other Officers.....400

- Division of charge. 6. When the services of an officer are required on account of more than one applicant during the same period of time, the charge for the fees due shall be divided *pro rata* between the applicants concerned.
- Fees for cautionary visits. 7. The applicant for the services of an officer at times outside the hours of general attendance shall, in addition to the fees for the services of that officer, pay fees, at the rates specified in regulation 5, for such cautionary visits as the proper officer may deem necessary.
- Fees to be paid to revenue. 8. All fees shall be paid into customs and excise revenue.
- Remuneration to officers. 9. Officers who have given services to the public outside the hours of general attendance shall be remunerated at such rates and for such hours as the Commissioner may direct.
- Form of reports, of vessels, aircraft and cargo. L.N.99/1997. 9A.(1) Every report under regulations 10 and 11 shall be in the prescribed form and may, subject to paragraph (2), be made in the form of a diskette or an electronic transfer.

(2) Where a report is made in the form of a diskette or an electronic transfer in accordance with paragraph (1), the master shall, within twenty-four hours of such report, submit a transcript thereof to the proper officer.

(3) A transcript of a report submitted under paragraph (2) shall be initialled in the manner specified in regulation 12.

PART III - IMPORTATION

Arrival and Report of Aircraft and Vessels

- Report of vessels. C.2. C.3. 10. (1) The inward report by the master of a vessel arriving from a foreign port shall be in Form C.2 and shall be made to the proper officer at the port or place of arrival.

(2) All packages for which no bill of lading has been issued shall be declared on the Parcels List in Form C.3.
- Report of aircraft and cargo. C.4. C.5. C.4 11. (1) The inward report by the master of an aircraft arriving from a foreign port shall be in Form C.4 and shall be made to the proper officer at the port or place of arrival.

(2) The report of the cargo shall be made in Form C.5 which shall be attached to the general declaration in Form C.4.

- Initialing of pages. 12. Each page of the report submitted under regulations 10 and 11, other than that on which the declaration is signed, shall be initialed by the master or his agent, and the master or agent shall number and seal together the pages and shall, if required, sign the report in the presence of the proper officer.
- Report of stores, crew's declaration and list of passengers. C.6. C.8. C.7. C.8. 13. (1) The master of a vessel arriving from a foreign port shall, immediately on demand, present to the proper officer a statement of the stores of the vessel in Form C.6, a declaration by each member of the crew of all dutiable goods in his possession in Form C.8 and, if the proper officer so requires, a list of passengers disembarking and remaining on board.
- (2) If the proper officer so requires, a stores list in Form C.7, a declaration in Form C.8 by each member of the crew of all dutiable goods in his possession, and a list of passengers disembarking and remaining on board, shall be delivered by the master of an aircraft arriving from a foreign port
- Arrival at two or more ports. 14. When an aircraft or vessel calls at more than one port or place in Kenya a separate report shall be made at each port or place.
- Vessels, etc., in ballast. 15. Aircraft and vessels not having on board goods other than stores and passengers' baggage shall be reported "in ballast".
- Description of cargo on reports. 16. The contents of every package and of all cargo in bulk intended for discharge at a port or place in Kenya shall be reported in accordance with the description thereof in the relevant bill of lading or freight note.
- Weight or measurement of cargo to be reported. 17. The report of every vessel shall show the weight or cubic measurement of the cargo reported according to which freight has been charged or, if no freight has been charged, the weight or measurement normally chargeable for a similar kind and quantity of goods.
- Reporting cargo for other ports in Kenya. 18. (1) Cargo intended for discharge at other ports or places in Kenya shall be shown separately in the inward report in the following form:
- "The undernoted cargo is reported for discharge at other ports or places in Kenya kg. (or other appropriate unit of quantity)."
- (2) If the proper officer so requires, cargo intended for discharge at other ports or places in Kenya shall be reported in the same manner as cargo to which regulation 17 applies.
- Cargo remaining on board. 19. Cargo remaining on board an aircraft or vessel for exportation may be reported as "General cargo remaining on board for exportation kg. (or other appropriate unit of quantity)", unless the proper officer in any particular case otherwise directs.
- Stores to be produced. 21. All stores which are required for the use of the crew and passengers of an aircraft or vessel during its stay in port shall, on request, be produced separately to the proper officer, who may either approve the quantity produced or require a portion or the whole of those stores to be placed under seal.
- Duty free allowance of stores to crew. 22. (1) Every person being the master, an officer or other member of the crew of any vessel in port or on coastwise passage to another port in Kenya may be permitted by the proper officer to retain in his possession, or to be issued with, for his personal use, an allowance of duty free stores in accordance with the following scale -

(a) in respect of every eight days or part thereof during the vessel's stay -

Rummaging of vessels and aircraft.

23. The crew shall give all possible assistance to officers engaged in rummaging an aircraft or vessel.

Amending inward reports. C.10, L.N 69/1998.

24. (1) Where cargo reported for discharge at a port or place in Kenya is found to be in excess or short of the report, or where it is found necessary to make an amendment in relation to the destination, ownership or status of such cargo, the master or his agent may make application to the proper officer for permission to amend the report.

(2) The application shall be in Form C.10 and shall set out the reasons for the discrepancies.

Conditions precedent to amendment of report.

25. Before the proper officer permits the amendment of a report, the master or his agent shall satisfy him in the case of goods found to be short of the report that the goods -

(a) were not shipped; or

(b) were discharged and landed at a previous port; or

(c) were overcarried and landed at a subsequent port; or

(d) having been overcarried, have been returned to and landed at a port in Kenya on the return voyage, or by some other aircraft or vessel which loaded them at the port to which they were overcarried; or

(e) were lost at sea; or

(f) were stolen or destroyed before the aircraft or vessel arrived within Kenya:

Provided that the proper officer may, subject to the production of such documentary evidence as the Commissioner may direct, permit the amendment of a report where the master or his agent is unable to comply with these requirements.

Aircraft or vessels landing or bringing to owing to accident, etc.

26. When the master of an aircraft or vessel which has been lost, or wrecked or compelled to land or to bring to within Kenya owing to accident, stress of weather or other unavoidable cause reports to the nearest officer or administrative officer he shall, on demand, produce the journey log book or other documents relating to the aircraft or vessel, the cargo, crew and passengers, and shall not allow any goods to be unloaded or any passenger to leave the vicinity of the aircraft or vessel without the consent of that officer.

Arrival Overland

Importation by

27. (1) Vehicles and goods, other than vehicles and goods to which the provisions of regulations 222 to 226 inclusive apply, imported overland shall be entered in the

overland routes. C.11 appropriate form prescribed in regulation 37.

(2) The person in charge of a vehicle which arrives overland at any place in Kenya shall report at the nearest custom house particulars of the vehicle and goods, if any, in Form C.11:

Provided that the proper officer may, in lieu thereof, accept a signed copy of the manifest outwards issued by the customs authorities at the foreign port or place whence the vehicle has arrived.

(3) Where the Commissioner permits any goods to be entered at a port other than the first port of entry at which the goods arrive in Kenya, he may require that the goods be accompanied by an officer to the port at which they are entered; and the carrier of the goods shall defray the cost of, or provide transport to and from his proper port for, each officer who accompanies the goods.

Unloading and Removal of Goods

Sufferance wharves and unapproved places. C. 12. 28. Where the master of an aircraft or vessel wishes to proceed to a sufferance wharf, or any place other than an approved place of unloading, to unload cargo, he shall apply to the proper officer for permission in Form C.12

Accommodation and transport to be provided. 29. (1) The proper officer may grant permission under regulation 18 subject to such conditions and directions as he may see fit to impose, and to the master or his agent defraying the cost of or providing accommodation in accordance with section 170 of the Act and transport overland or by sea, as the proper officer may decide, from and to his proper port for each officer whose services the proper officer may deem necessary at the sufferance wharf or other place.

(2) The proper officer may require the master of an aircraft or vessel proceeding to a sufferance wharf or other place to deposit with him in advance a sum sufficient to cover the expenses referred to in paragraph (1).

Goods not to be unloaded at a sufferance wharf until entered. 30. No goods shall be unloaded at a sufferance wharf or at any place other than an approved place of unloading until they have been entered:

Provided that the Commissioner may generally in regard to any particular sufferance wharf or place or in any particular case waive or modify this requirement.

Boat or tally note. 31. (1) Where goods are discharged from an importing aircraft or vessel into another vessel to be landed, the master or his agent shall sign and transmit with each shipment an account of the goods.

(2) In the case of transshipment cargo the account shall be headed "Transshipment cargo only".

(3) Before any goods are discharged from the vessel the account shall be delivered to the proper officer at the place at which the goods are to be landed:

Provided that the Commissioner may dispense with the furnishing of an account either generally or in any case.

- Permission to leave place of unloading. 32. (1) A vessel to which regulation 31 applies which has arrived at any place of unloading shall not depart therefrom except with the permission of the proper officer.
- (2) Where any goods remain on board any vessel so permitted to depart the person in charge thereof shall observe such directions as the proper officer shall give.
- Transit sheds. L.N.64/1999. L.N.67/2000 33. (1) Every building used as a transit shed shall be constructed and secured to the satisfaction of the Commissioner.
- L.N. 48/2004 (2) In addition to any fastening which may be affixed by the customs the doors of transit sheds shall be secured by one or more locks by the wharf owner or his representative.
- (3) Security required under section 9(2) of the Act shall be executed in Form CB 18.
- (4) A transit shed owner shall provide an area or premises within the transit shed for the purposes of repacking, skipping, bulking, transshipment or sorting of goods.
- (5) Goods shall only be delivered for clearance in a transit shed if they are consigned to that shed.
- (6) Where goods are removed from the port to a transit shed, the owner of the shed shall execute security for the goods in Form CB2
- (7) The operator of a transit shed shall operate under such conditions as the Commissioner may specify:
- Provided that where the licensee wishes to consolidate sea cargo, he shall seek the prior approval of the Commissioner.
- Access to transit sheds. 34. Immediate access to any transit shed shall be granted on demand made by an officer acting in the execution of his duty; and if the wharf owner or his representative fails or refuses to grant him access the proper officer may cause the transit shed to be opened by any means in his power and any expenses thereby incurred including the cost of repairs, shall be paid by the wharf owner.
- Permit to re-land goods. 35. Before any goods which have been put into any aircraft or vessel may be re-landed, the owner shall apply in writing to the proper officer and obtain permission to unload the goods, and shall thereupon land the goods and dispose of them as directed by the proper officer.
- Certificate of landing. C.13. 36. The proper officer may issue to any person who satisfies him that he is so entitled a certificate of landing of any goods in Form C.13 or in such other form as may be required by the authorities in the country requiring the certificate.
- Entry, Examination and Delivery of Goods*
- Forms of entry. C.14. C.15. C.16. L.N.6/1999 37. (1) Imported goods, other than goods in transit or for transshipment, and goods to which the provisions of regulations 222 to 226 inclusive apply, shall be entered in whichever of the under mentioned forms is appropriate -
- (a) provisional (Form C.14 and Form C 63);
- (b) import for home use (Form C.15 and Form C 63);

(c) warehousing (Form C.16 and Form C 63).

(2) Entries referred to in subparagraphs (a) and (b) of paragraph (1) shall be presented in quadruplicate.

(3) Entries for the warehousing of goods at the port of importation shall be presented in quintuplicate and for the warehousing of goods elsewhere than at the port of importation in sextuplicate.

(4) Bonds shall be furnished in Form CB.4 or by cash deposit.

Particulars to be declared on Forms. L.N.99/1997.

38. (1) Where on any form the value of imported goods, whether free or exempt from duty, liable to specific duty or liable to *ad valorem* duty, is required to be declared, the value shall be declared in accordance with sections 127, 127B, and 127C of, and the Seventh Schedule to, the Act.

(2) Goods declared on all perfect entries shall be declared in accordance with -

(a) the titling of the form of entry;

(b) the Schedules to the Act.

(3) A computerised entry declaration in a prescribed Form duly signed by the owner or agent may be accepted by the proper officer.

Pre-shipment inspection. L.N.6/1999. w.e.f 1.7.96
L.N.120/1996
L.N.287/1996
L.N.130/2002 Inserted by L.N.130/2002
L.N.99/1997
L.N.67/2000,
L.N.91/2001
L.N.91/2002
L.N.130/2002
L.N.63/2003

38A.(1) The imported goods specified in the Fifth Schedule shall be subject to pre-shipment in accordance with section 127D of the Act.

(2) The Commissioner shall notify in the Gazette the name of every person appointed as a pre-shipment inspection agent under the Act and shall specify in relation thereto the countries or regions at which such person shall conduct pre-shipment inspection.

(3) An importer of goods other than the goods specified in the Sixth schedule shall, prior to shipment of such goods, complete an import declaration form in Form C62 and present it together with an application fee of five thousand shillings to the office in Kenya of a pre-shipment inspection agent operating at the place where such goods were purchased.

(4) On receipt of an import declaration form and the application fee under paragraph (3), the pre-shipment inspection agent shall, where the respective goods are subject to pre-shipment inspection, proceed to inspect such goods in accordance with the provisions of the Act:

Provided that no import declaration fee shall be charged in respect of goods intended for use in the manufacture of goods for export except the minimum processing fee of five thousand shillings.

(5) An importer shall present a copy of the import declaration form completed under paragraph (3) to Customs at the time of entering the goods, together with an import declaration fee which shall be two per cent of the dutiable value of the goods reduced by an amount equal to the application fee paid under paragraph (3).

Provided that no import declaration fee shall be charged in respect of goods-

- (a) imported into Kenya from any of the East African Community partner states, that satisfy the Eastern African Community rules of Origin.
- (b) Intended for use in the manufacture of goods for export, except the minimum processing fee of five thousand shillings.

(6) Where any goods subject to pre-shipment inspection are imported prior to such inspection, the goods may be inspected locally at a fee which shall be -

(i) in the case of motor vehicles, twenty per cent of the assessed f.o.b. value; and

(ii) in the case of all other goods, ten per cent of the assessed f.o.b. value.

(7) Local inspection of any goods under paragraph (6) shall be limited to two consignments per importer and any excess thereof shall be either re-exported at the cost of the importer or abandoned to Customs.

(8) In this regulation -

"pre-shipment inspection" has the meaning assigned to it in section 127D of the Act;

"pre-shipment inspection agent" means a person appointed by the Commissioner under section 127D (2) of the Act.

(9) A courier service company which uses the concession granted under subparagraph (xviii) of paragraph (2) of the Fifth Schedule to release commercial shipments without pre-shipment inspection shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings.

(9A) Notwithstanding anything in this Regulation, all computer hardware and software and accessories thereof, and all similar equipment imported into the country, whether purchased, donated as gifts or as part of a donor-funded project, shall be inspected for purposes of this Regulation in such manner and detail as the Minister may deem appropriate.

Reference to be made on all entries for contents of same packages.

39. Where separate entries are made for goods contained in the same package each entry shall contain a reference to the other.

Imported goods to be entered within 21 days of commencement of discharge on arrival.
L.N.64/1999
L.N.67/2000
L.N.63/2003

40. (1) Goods for which entries are required under regulation 37 shall be entered within twenty-one days of the commencement of the discharge of the importing aircraft or vessel or, in the case of goods imported overland, of their arrival at the frontier port and any such goods remaining unentered after that period, or after such further period as the proper officer may allow, shall, if the officer so requires, be deposited in a customs warehouse.

(2) Where goods entered in transit or for transshipment before declaration of customs warehousing date are not removed from the port of entry within thirty days from the date they were entered, such goods shall be removed to a customs warehouse.

Landing of surplus stores. 41. If the master of an aircraft or vessel desires to land any surplus stores, he shall apply in writing to the proper officer stating the number of packages and quantity and description of the stores, and the officer may permit them to be landed and entered for warehousing or for home use, or he may allow the duty to be paid as if the surplus stores were passengers' baggage.

Disembarkation of persons. 42. (1) No person shall land from any aircraft or vessel except at a place appointed in accordance with section 9 of the Act.

(2) The following persons on landing at any port or place from an aircraft or vessel which has arrived from or called at a foreign port shall proceed forthwith to the baggage room or other place set aside for the examination of baggage and there remain until they receive the permission of the proper officer to leave that room or other place

- (a) any person who is disembarking at that port or place;
- (b) any person, including any person who is returning ashore, who has any uncustomed goods in his possession, whether upon his person or in his baggage;
- (c) the crew of an aircraft or vessel who are leaving that aircraft or vessel, either temporarily or for any other reason, and wish to remove their baggage, or any part thereof, from that aircraft or vessel;
- (d) any passenger who is temporarily leaving that aircraft or vessel and wishes to remove therefrom his baggage, or any part thereof;
- (e) Any person who may be required by the proper officer so to do.

(3) Any person who contravenes this regulation shall be guilty of an offence.

Access to baggage room. 43. (1) No person shall enter the baggage room or other place set aside for the examination of baggage except the persons required by the customs to enter it, the proper officers, and such other persons as may be permitted by the proper officer to enter the baggage room or other place.

(2) Any person who contravenes this regulation shall be guilty of an offence.

Baggage to be taken to examination place. 44. (1) The baggage and any uncustomed goods in the possession, whether upon his person or in his baggage, of any person to whom regulation 42 applies shall be taken without delay to the nearest place appointed for the examination of baggage, or such other place as the proper officer may direct, and shall not be removed therefrom until the baggage or goods have been examined and passed by, and any duty due thereon paid to, the proper officer.

(2) No person shall remove any baggage or goods out of the baggage room or other place until the proper officer authorizes their removal.

(3) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence.

Baggage examination. 46. An officer may refuse to attend to any person until the whole of that person's baggage is presented to him in one place or, where the baggage belongs to more than one person, until all the others thereof attend him together.

Unclaimed Baggage. 48. All baggage unclaimed or uncleared after one day shall be removed by the master

or agent of the aircraft or vessel to the customs warehouse and shall, after being deposited therein for a period of eight days, be dealt with in accordance with section 34 of the Act.

Unaccompanied baggage declaration C.18.

49. The owner of any passenger's unaccompanied baggage shall make a declaration of that baggage and the articles contained therein in Form C.18.

Goods delivered in special circumstances. C.19. C. B. 1. L.N.6/1999

50. If in any special circumstances the owner of perishable or other goods wishes to take delivery of those goods prior to passing entry, he shall apply to the proper officer on Form C.19 and Form C 63 and furnish a bond in Form C.B.1, or such other security as may be required, in such amount as the proper officer may decide; and the importer shall enter the goods within forty-eight hours of taking delivery of them.

Importer to provide special implements for examination.

51. If the quantity of any cinematograph films or other goods of which an officer desires to take an account cannot conveniently be ascertained by the usual implements employed in the examination of goods, the importer shall provide apparatus for the use of the officer to enable him to take an account of them.

Packages found partly empty.

52. If the importer of any goods contained in packages found slack or partly empty when landed desires to fill them from other packages declared on the same entry, he shall apply on the relative entry to the proper officer for permission to do so and shall carry out all instructions of that officer in regard to the filling of the packages and to the disposal of any resultant residue or empty packages.

Packing of goods imported in bulk.

53. If the proper officer so requires, the importer of any goods imported in bulk shall pack those goods into bags or other packages of even net weight before the goods are delivered.

Goods may be examined at private premises.

54. When any goods which have been entered cannot on account of their value, size or packing or for any other reason, be easily examined by the proper officer in a transit shed or a customs area and the importer desires that they be examined at his private premises, he shall apply in writing therefor to the proper officer, who may grant the application under such conditions as he may impose.

Entry not required for goods, etc., imported for temporary use.

55. Entries shall not be required for any vehicles and goods imported in accordance with regulations 222 to 226 inclusive, unless the vehicles or goods are not re-exported.

Removal coastwise of imported goods.C.B.2. C.38. L.N.6/1999 L.N.91/2002

56. Goods discharged from an importing aircraft or vessel for removal coastwise shall be constructively warehoused at the port of importation and dealt with in accordance with section 43 of the Act:

Provided that -

(i) the Commissioner may, generally or in any particular case, allow an inland transit shed operator to remove goods coastwise for subsequent customs clearance at that inland transit shed, in which case the transit shed operator shall furnish a bond in form CB2 and satisfy all other conditions that the Commissioner may impose;

(ii) the proper officer may, generally or in any particular case, allow the master of an aircraft or vessel to remove the goods coastwise as if they were goods reported for transhipment, in which case the master shall enter into a bond in form C.B.2, or

furnish such other security as the proper officer may require, and enter the goods in Form C.38 in quintuplicate.

Customs warehouse
rent. L.N.64/1999

57. (1) Rent shall be charged on goods deposited or deemed to be deposited in a customs warehouse at the following rates -

(a) at the port of Kilindini, Sh. 100 per bill of lading tonne per day or part thereof;

(b) at the inland container depots, Sh. 100 per bill of lading tonne per day or part thereof;

(c) at the Jomo Kenyatta International Airport, Sh.1,000 per bill of lading tonne per day or part thereof;

(d) at all other ports and places, Sh. 50 per bill of landing tonne per day or part thereof;

(e) accompanied baggage (excluding motor vehicles) or any other goods which the proper officer is satisfied cannot be dealt with under subparagraphs (a), (b), (c), or (d), Sh. 40 per package or item per week or part thereof:

Provided that -

(i) the minimum rent charged shall be Ksh. 40; and

(ii) rent under this regulation shall not be charged on passengers' baggage (excluding motor vehicles) if removed within eight days of the date of deposit in a customs warehouse.

(2) For the purpose of calculating rent charges a bill of lading tonne means the unit of weight, measurement or value on which any particular bill of lading is based; and fractions of tonne shall be chargeable on tenths and any portion of a tenth shall be regarded as a whole tenth.

(3) In calculating customs warehouse rent under paragraph (1), Saturdays, Sundays and public holidays shall be excluded.

Rent to be paid before
delivery.

59. All rents and charges on goods deposited in a customs warehouse shall be paid to the proper officer before the delivery of the goods.

Custom houses deemed
to be customs
warehouses.

60. If at any port or place in Kenya where an officer is stationed a building has not been specifically approved by the Commissioner for use as a customs warehouse, the custom house and any premises occupied and administered by the customs shall be deemed to be a customs warehouse.

PART IV - WAREHOUSING OF GOODS

Provisions Relating to Bonded Warehouses

Goods not to be
warehoused.
L.N.120/1996.
L.N.91/2002
L.N.130/2002, L.N.
2/20004, L.N. 48/2004

61. (1) The following goods, and any other goods which the Commissioner may from time to time deem to be unsuitable for warehousing, shall not be warehoused -

Acids.
Ammunition.
Arms.
Ashes.
Chalk (powdered).
Firewood.
Fireworks.
Fish (dried).
Goods of a perishable, combustible or inflammable nature, but not including petroleum products for storage in approved places.
Maize.
Millet (powdered).
Matches.
Rice.
Sand.
Stone.
Straw.
Sugar.
Wheat.

Office supplies ready for retail sale including stationery, computer paper, pens, markers, ink, cartridges for pens, pencils, files, typewriters and printer ribbons.

Cosmetic products ready for retail sale including fragrances, powder, lotions, creams, lipsticks, hair colouring and hair care products.

Batteries including vehicle batteries and dry cells.

Spares for vehicles.

Second hand motor vehicles.

Building and construction materials including pipes, nuts, bolts, nails, metals, articles, electrical fixtures and parts, and tools.

Carpets and floor coverings.

Clothing (used).

All foodstuffs in any form, whether Fresh or preserved, including bulk commodities.

Goods that are duty free under the First Schedule to the Act.

Cigarettes and tobacco, except where these are warehoused by local excise manufacturers or duty free shops.

Paper and paperboard.

Wines and Spirits, and motor vehicle tyres (except with prior authority from the

Commissioner).

Denatured and undenatured spirit of tariff number 2207.10.00 and 2207.20.00

Enamelware, kerosene lamps and hurricane stoves

(2) Notwithstanding the provisions of paragraph (1), the following categories of goods may be warehoused-

(a) goods which, to the satisfaction of the Commissioner, are destined for the regional market provided that only 25% of such goods may be entered for home use;

(b) raw materials including completely knocked down kits imported by registered local manufacturers or assemblers where such materials are intended for use in the manufacture or assembly of their products.

(3) For the purposes of paragraph (2), "regional market" means the countries with which Kenya shares a common border, and includes Rwanda, Burundi and Zaire.

(4) *deleted by L.N. 2/2004.*

(5) Any person who contravenes the provisions of this regulation commits an offence.

Owner to keep packages in repair.

62. The owner of any warehoused goods shall maintain the packages in which they are contained in a proper state of repair.

Goods refused for warehousing

63. (1) If any goods entered to be warehoused are found by the officer examining them to be insecurely packed he may refuse to permit them to be warehoused.

(2) Whenever in accordance with the Act an officer refuses to permit any goods to be warehoused, the warehousing entry shall be deemed to be void, and the goods shall be deemed to be unentered; and if the goods have been removed from a transit shed or a customs area they shall be returned thereto without delay by, or at the expense of, the owner, unless the proper officer allows them to be entered for home use forthwith.

(3) The owner shall be responsible for any loss or damage which may take place between the time the goods are removed from, to the time they are returned to, a transit shed or a customs area and examined by the proper officer.

Entries for warehoused goods. C. 20. C.21. C.22. C.23. L.N.6/1999

64. (1) Warehoused goods shall be entered in whichever of the undermentioned forms is appropriate -

(a) home use (Form C.20 and Form C 63);

(b) exportation or use as stores for aircraft or vessels (Form C.21 and Form C 63);

(c) removal (Form C.22 and Form C 63);

(d) re-warehousing (Form C.23).

(2) In respect of goods entered under subparagraphs (a) and (d) of paragraph (1), entries shall be furnished in quadruplicate and, in respect of paragraphs (b) and (c) of that paragraph, in quintuplicate.

(3) Entries shall contain such particulars of the goods as are required by the form of entry and the total number of packages shall be stated on every entry in words at length.

(4) All goods which have been entered shall forthwith be dealt with in accordance with the entry.

Acceptance by warehouse keeper.

66. Entries for goods for warehousing, or for removal for re-warehousing, other than entries in respect of goods to be warehoused or re-warehoused in a bonded warehouse licensed by the owner of the goods, shall not be accepted by the proper officer unless the warehouse keeper signifies thereon in writing that he agrees to accept the goods into the warehouse for which they are entered.

Conditions of repacking in warehouse. C.24.

67. Permission to repack warehoused goods may be granted on application being made to the proper officer in Form C.24 by the owner of the goods, who shall observe all the requirements of the officer in regard to opening, removing, marking, stacking, sorting, weighing, measuring and closing the packages in which the goods to be repacked are, or are to be, contained, and as to the payment of duty thereon of any part of the goods.

Transfer of ownership of goods. C.25.

68. When the owner of any goods deposited in a warehouse desires to transfer them to another person, subject to the provisions of section 40 of the Act, he and the person to whom it is desired to transfer the goods shall each complete and sign in the appropriate places a form of transfer in Form C.25.

Time during which goods may be warehoused.

69. Unless the proper officer in any special circumstances otherwise allows, goods shall not be removed from a transit shed or a customs area to a Government or a bonded warehouse, or from one such warehouse to another, unless the warehousing of the goods can be completed during the warehousing hours prescribed by the Commissioner.

Goods to be consigned to the proper officer.

70. All goods entered for warehousing at a port other than the port at which they are imported and all goods entered for removal from a warehouse for re-warehousing at another port, shall be consigned care of the proper officer at the port at which they are to be warehoused or re-warehoused, as the may be, and the relative consignment note or other document shall be conspicuously marked "in bond"; and those goods shall not be delivered to the consignee or to any other person without the authority of the proper officer.

Treatment of warehoused and re-warehoused goods on removal.

71. Where warehoused goods are removed from one bonded warehouse to another, those goods shall be deemed to be due for re-warehousing on expiry of six months from the date of first warehousing prior to removal; and, where those goods had been re-warehoused prior to removal, they shall be entered for home use or for exportation or for use as stores for an aircraft or vessel on expiry of six months from the date of first re-warehousing.

L.N. 146/1993

Licence for bonded warehouse. C.26. C.27. L.N. 48/2004

72. (1) An application for the licensing of a building as a bonded warehouse and an application for the renewal of the licence shall be made in Form C.26.

(2) A notice inviting new applicants and applications for renewal of the licence shall

be made by the commissioner in such manner as he may see fit. (3) The proposed building shall be suitable for warehousing purposes so far as situation, construction and accommodation are concerned and a plan of the buildings and thoroughfares shall accompany the application.

(4) The licence shall be in Form C. 27.

(5) The licence for duty-free shops shall be in Form C27B.

(6) The Commissioner may revoke the licence granted in respect of a bonded warehouse where -

(a) the licensee of the bonded warehouse fails to account to the satisfaction of the Commissioner for any goods found therein; or

(b) in any calendar year, the average monthly output in duties and taxes is less than ten million shillings.

L.N. 48/2004

72A. No premises shall be licensed as a bonded warehouse unless they are located in a designated industrial area and are accessible by road or railway.

Bonded warehouse fees.
L.N. 48/2004

73. (1) A non-refundable late application fee of five thousand shillings shall be payable in respect of each application for the licensing of a building as a bonded warehouse received after the expiry of the time notified to submit the applications.

(2) When the application has been approved, the applicant shall pay the licence fee of two hundred thousand shillings annually:

Provided that for a licence issued in the course of the year, the remaining part of that year shall count as a full year.

Bonds for bonded
warehouses. CB.6.

74. A bond in Form CB.6 to secure the duty on goods in a bonded warehouse and compliance with all the provisions of the Act and these Regulations relating to bonded warehouses shall be given by the licensee.

Alterations to bonded
warehouses.

75. (1) No person shall make any alteration or addition to any bonded warehouse without first obtaining the permission of the Commissioner.

(2) Any person who contravenes this regulation shall be guilty of an offence.

Death of licensee to be
reported.

76. The death of a licensee of a bonded warehouse or of a surety of the bond therefor or proceedings in bankruptcy against a licensee or a surety or any other change shall be reported at once to the Commissioner by the licensee or the surety.

Bonded warehouses to
be numbered.

77. (1) Bonded warehouses shall be distinguished by numbers.

(2) The words "Customs Bonded Warehouse" and the number allocated to the warehouse shall be clearly marked on the principal entrance to the warehouse or elsewhere as the proper officer shall approve and shall be removed when a warehouse ceases to be licensed under the Act.

(3) Any person who contravenes this regulation shall be guilty of an offence.

Rent charges in Government warehouses.

78. (1) Rent shall be charged on goods warehoused in a Government warehouse at the rate of Sh.15 per bill of lading tonne per month or part thereof, subject to a minimum charge of Sh.5.

(2) Rent charges shall be calculated in accordance with regulation 57 (2).

Goods to be removed when Government warehouse closed.

79. Where notice has been given to the owner of any goods warehoused in a Government warehouse that it is proposed to close the warehouse, the owner shall, within the period specified in the notice, either enter the goods for home use or for exportation or for use as stores on an aircraft or vessel or for removal to another bonded warehouse; and any goods which are not so entered and removed from the warehouse shall, on the expiry of that period, be dealt with in accordance with section 46 of the Act.

PART IVA - MANUFACTURE UNDER BOND

Provisions relating to manufacture of goods for export under bond. CF. 1. L.N. 146/1993 CF. 5. CF. 6. L.N.67/2000

79A. (1) Imported plant machinery and equipment including raw materials and furnace oil exclusively for use in the manufacture of goods for export under bond shall be entered in Form CF.1 in sextuplicate.

(2) The value of the imported goods under paragraph (1), whether free or exempt from duty, or liable to specific duty or liable to *ad valorem* duty, shall be declared in accordance with sections 127, 127B and 127C of, and the Seventh Schedule to, the Act.

(3) At the port of entry, the proper officer shall take a particular account of the imported goods and shall enter the account in a special register in Form CF. 5.

(4) The plant, machinery, equipment and the raw materials for use in the manufacture of goods for export under bond shall be consigned care of the proper officer at the station of destination and those goods shall not be delivered to the consignee or to any other person without the authority of the proper officer.

(5) On receipt of the goods in the bonded factory, the licensee shall -

(a) enter all the imported plant, machinery and equipment and raw materials in the register in Form CF. 6; and

(b) enter on a separate register in Form CF. 6 all the locally obtained machinery, equipment and raw materials.

Provisions relating to bonded factories. CF.2. CF.3. CFB.1.

79B. (1) An application for licensing of premises for manufacturing under bond shall be made in Form CF. 2.

(2) The factory shall be suitable to the satisfaction of the Commissioner for manufacturing of goods for export under bond in so far as the location, situation, construction and accommodation are concerned and a plan of the buildings, factory, and thoroughfares shall accompany the application.

(3) The licence shall be in Form CF. 3 and shall expire on the 31st December in the

year of issue.

(4) When the application has been approved, the applicant shall pay the licence fee of forty thousand shillings for each bonded factory regardless of the time of the year the licence is issued.

(5) A licensee to whom a licence is issued shall enter into a bond in Form CFB.1 to secure the duty on goods on removal or in the factory and compliance with all the provisions of the Act and these Regulations relating to manufacturing of goods for export under bond.

(6) The death of a licensee or of a surety or any other change shall be reported forthwith to the Commissioner by the licensee or the surety.

(7) All licensed bonded factories shall be distinguished by numbers and the words "Customs Bonded Factory" and the number allocated to the factory shall be clearly marked on the principal entrance to the factory or elsewhere as the proper officer shall approve and shall be removed when a factory ceases to be licensed under the Act.

(8) A licensee of a bonded factory shall submit a return of the goods remaining in his bonded factory at the close of business on the 30th June in each year to the proper officer not later than the 31st July of the same year.

(9) Any person who contravenes this regulation shall be guilty of an offence.

Manufactured goods to be entered on register. CF.7.

79C. All manufactured goods shall be entered in the "Manufactured Goods Register" by the manufacturer in Form CF. 7 and shall be stored in the "Manufactured Goods Stock Room" until they are delivered therefrom for exportation or for removal to another bonded factory for further manufacture.

Entry of manufactured goods. CF.4. L.N.6/1999.

79E. Manufactured goods for export under bond shall be entered in Form CF. 4 and Form C 63 and the details recorded in the manufactured goods register.

Treatment of manufactured goods on exportation. L.N.63/2003

79F. Delivery of manufactured goods from the manufactured goods stock room shall only be made in the presence of the proper officer after they have been duly entered for exportation and shall be transported directly to the port of final exportation in sealed vehicles or containers except in the case of exceptional loads as denned in regulation 96 (8), or in any special case otherwise authorized by the Commissioner.

Certificates of export to be obtained.

79G. The licensee shall obtain a certificate of exportation from the proper officer at the port of exit on completion of the exportation, and the certificate shall be submitted to the proper officer at the bonded factory as proof of such export within thirty days, or such further period as the proper officer may allow, from the date of entry of the goods.

Entry for home use.

79H. (1) Notwithstanding anything contained in these Regulations, the Commissioner may, subject to such conditions and limitations 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 entered for home use.

L.N. 146/1993

C. 20. L.N.6/1999.

(2) Subject to paragraph (1), goods manufactured in a bonded factory and are intended for home use shall be entered in Form C.20 and Form C 63.

PART V - EXPORTATION

Entry Outwards and Loading of Aircraft and Vessels

- Entry outwards. C.28. 80. Entry outwards of a vessel shall be made by the master or his agent in Form C.28.
- Entry for exportation C. 29. L.N.6/1999. 81. (1) Goods for exportation, other than warehoused goods, goods under drawback, goods in transit or for transshipment and goods to which the provisions of regulations 222 to 226 inclusive apply, shall be entered in Form C.29 and Form C 63.
- (2) The entry shall be submitted in octuplicate and shall contain such particulars of the goods entered for exportation as are required by the entry.
- Sufferance wharves and unapproved places. C.12. 82. Where the master of an aircraft or vessel wishes to proceed to a sufferance wharf, or any place other than an approved place of loading, to load cargo, he shall apply to the proper officer for permission in Form C.12.
- Accommodation and transport to be provided. 83. (1) The proper officer may grant permission under regulation 82 subject to such conditions and directions as he may see fit to impose, and subject to the master or his agent defraying the cost of or providing accommodation in accordance with section 170 of the Act and transport overland or by sea, as the proper officer may decide, from and to his proper port for each officer whose services the proper officer may deem necessary at the sufferance wharf or other place.
- (2) The proper officer may require the master of an aircraft or vessel proceeding to a sufferance wharf or other place to deposit with him in advance a sum sufficient to cover the expenses referred to in paragraph (1).
- Goods not to loaded at sufferance wharf until entered. 84. No goods shall be loaded at a sufferance wharf or at any place other than an approved place of loading until they have been entered:
- Provided that the Commissioner may generally in regard to any particular sufferance wharf or place or in any particular case waive or modify this requirement.
- Master to submit passenger list. 85. (1) If the proper officer so requires, the master or his agent shall deliver to the proper officer, before any passenger embarks on any aircraft or vessel, a correct list of the passengers embarking.
- (2) No person shall embark on any aircraft or vessel except at a place appointed in accordance with section 9 of the Act, nor, in the case of a passenger, until permission to embark has been granted by the proper officer.
- (3) The baggage of passengers of an aircraft or vessel proceeding to a foreign port shall be loaded at such place as the proper officer may direct and, unless the proper officer otherwise allows, shall not be loaded until it has been examined and passed by him for shipment.
- (4) Any person who contravenes this regulation shall be guilty of an offence.
- Shipment before entry. C.30. CB.7. 86. Where, under the provisions of section 65 of the Act, the proper officer may permit the exportation, prior to entry, of goods, whether liable to or free of export duty, application shall be made by the exporter in Form C.30 in duplicate and security furnished in Form CB. 7 or by cash deposit in lieu.

- Cargo landed in error. C.31. 87. Where any goods have been unloaded in error, the master or agent of the aircraft or vessel shall make application in Form C.31 to the proper officer at the place of unloading for permission to reload the goods and obtain that permission in writing before removing them from the place of unloading, and he shall observe all such conditions in regard to the removal and reloading of the goods as the proper officer may impose.
- Shipment of duty paid and free stores. C. 32. 88. The master of an aircraft or vessel desiring to ship duty paid stores, other than under drawback, or stores which are not liable to duty, shall make application to the proper officer in Form C.32.
- Shipment of drawback and dutiable store. 89. The master of an aircraft or vessel desiring to ship as stores any goods from a Government or bonded warehouse or any goods under drawback shall comply with the relevant regulations accordingly.
- Transfer of store. C.33. 90. (1) The master of an aircraft or vessel desiring to transfer stores from one aircraft or vessel to another shall make application to the proper officer in Form C.33 in triplicate.
(2) Any person who contravenes this regulation shall be guilty of an offence.
- Transfer bond. CB.5. 91. Stores subject to duty shall not be transferred from one aircraft or vessel to another until a bond has been given in Form CB.5 or cash deposit in lieu.
- Conditions of leading or transfer of stores. 92. The loading or transfer of stores shall be subject to the observance by the applicant of any conditions imposed by the proper officer and shall not commence until the appropriate entry has been passed or application has been granted.
- Production of stores before shipment. 93. (1) All stores shall be produced to the proper officer before being put on board an aircraft or vessel, and upon being put on board shall not be taken into use without the express permission of the proper officer while the aircraft or vessel is within Kenya:

Provided that duty-paid stores on which drawback of import duty, suspended duty or dumping duty, or remission, refund or rebate of excise duty is not claimed and stores which are not liable to duty may be taken into immediate use.

(2) Any person who contravenes this regulation shall be guilty of an offence.
- Conditions under which goods deemed to be put on board. 94. Goods entered under bond or covered by cash deposit for exportation or use as stores or for transshipment shall not, unless the Commissioner otherwise directs, be deemed to have been put on board the aircraft or vessel unless they are -

(a) entered on an appropriate form;

(b) produced to the proper officer for examination immediately prior to loading;

(c) loaded on the exporting aircraft or vessel immediately after examination;

(d) produced to the proper officer, if he so requires after loading.

(e) certified on the appropriate form by the master or other principal officer of the aircraft or vessel on having been received on board;

(f) except in the case of aircraft or ships' stores, included in the outward manifest of the aircraft

or vessel.

Exportation by overland routes. C. 11.
L.N.67/2000
L.N.91/2001
L.N.91/2002

95. (1) Vehicle and goods, other than vehicles and goods to which the provisions of regulations 222 to 226 inclusive apply, exported overland shall be entered in the form prescribed in regulation 81.

(2) The person in charge of a vehicle, whether or not that vehicle is conveying goods, shall report to the proper officer full particulars of the vehicle and the goods, if any, in Form C.11.

(3) Subject to paragraph (4) petroleum products for export shall only be conveyed in a sealable vehicle in respect of which there is a valid licence issued in accordance with paragraph (6).

(4) Paragraph (3) shall not apply to a vehicle licensed for that purpose in any member state or the Common Market for Eastern and Southern Africa (COMESA) and in respect of which a certificate C 37 B has been granted or a vehicle licensed to carry transit goods.

(5) An application for the licence required under paragraph (3) shall be made in writing to the Commissioner.

(6) The Commissioner may, subject to the payment of a licence fee of fifteen thousand shillings and to such conditions as he may deem necessary, issue a licence to the applicant in Form C37C.

(7) The Commissioner may at any time cancel or suspend a licence issued under paragraph (6) if the licensee is in breach of any condition attached to the licence.

(8) A person who contravenes any of the provisions of this regulation shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings.

Goods in Transit or for Transhipment

Goods in transit. C. 34.
CB.8 L.N.99/1997
L.N.171/1997
L.N.6/1999 L.N.
91/2001 L.N.91/2002
L.N.63/2003 L.N.
48/2004

96. (1) Goods imported in transit to a foreign port or place shall be entered at the port of importation in Form C.34 and Form C 63 in sextuplicate within seven days, or such further period as the proper officer may allow, of the commencement of the discharge of the importing aircraft or vessel, or, in the case of goods imported overland, before the goods are conveyed in transit through Kenya, and the goods remaining unentered after that period or after such further period as the proper officer may allow shall, if the officer so requires, be deposited in a customs warehouse.

(2) At the time of entering the goods in transit the owner shall produce to the proper officer the documents relating to them.

(3) The owner shall give security in such sum as the proper officer may require for -

(a) the conveyance of the goods by the road or routes approved by the proper officer and for their exportation within fifteen days or, in the case of goods imported by air, within seven days, of the date of passing the entry, or within such further period, not exceeding fifteen days in both cases, as the proper officer may allow, but the further period shall not be allowed unless application for the extension is made prior to the expiry of the prescribed periods:

Provided that the Commissioner may extend further period allowed by the proper

officer if he is satisfied -

- (i) that the goods are a subject of a pending court case;
 - (ii) that the goods are relief supplies belonging to an approved international relief agency;
 - (iii) that they are petroleum products entered in transit through Kenya;
 - (iv) that they are tea and coffee which are subject to international auction;
 - (v) that the goods have not been exported due to special circumstances arising from national or international emergencies, civil strife, closure of border to trade or due to any other reasons beyond the control of the owner.
- (b) the production within the period allowed by subparagraph (a) for the exportation of the goods of evidence satisfactory to the proper officer that the goods have been so exported; and
- (c) the payment of any duty which may become payable in respect of the goods or any of them.
- (4) Security given by bond shall be in Form CB. 8.

(5) Goods in transit shall only be carried through Kenya in sealed vehicles except in the case of exceptional loads as defined in paragraph (8) or any other special case otherwise authorized by the Commissioner; and in the case of goods carried by road the carrying vehicle shall -

- (a) have been licensed for the purpose by the Commissioner;

Provided that this paragraph shall not apply to a vehicle which has been licensed in any member state of the Common Market for Eastern and Southern Africa and in respect of which a certificate of approval in Form C.37A has been granted.

(b) bear the words "TRANSIT GOODS" printed on both sides boldly and clearly in capital letters as specified in Form C.37, and for the purposes of this subparagraph and paragraph (13), reference to a carrying vehicle means, in the case of an articulated vehicle the semi-trailer and not the motive unit;

(c) in the case of a vehicle transmitting within the Member State of the Common Market for Eastern and Southern Africa be exempt from the conditions of paragraph (b), but will, instead, have affixed to its front and rear a plate measuring 120 x 1,000 millimeters bearing white letters "PTA-TRANSIT-ZEP" against a blue background and under a dotted line; such letters shall be 70 millimeters high; and the plates shall be so placed as to be clearly visible, removable and capable of being sealed, and the seals to such plates shall be affixed by the customs authorities of the customs offices of commencement and shall be removed by the authorities of the customs offices of destination;

- (d) be constructed and equipped in such manner that -

- (i) the customs seal can be simply and effectively be affixed thereto;
 - (ii) no goods can be removed from or introduced into the sealed part of the vehicle without breaking the customs seal;
 - (iii) it contains no concealed spaces where goods may be hidden;
 - (iv) all spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for customs inspection;
 - (v) should empty spaces be formed by the different layers of the sides, floor and roof of the vehicle the inside surface shall be firmly fixed, sold, unbroken and incapable of being dismantled without leaving obvious traces;
 - (vi) openings made in the floor for technical purposes, such as lubrication, maintenance and filling of the sand-box are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside;
 - (vii) doors and all other closing systems of the vehicle fitted with a device which shall permit simple and effective customs sealing and the device is either welded to the sides of doors where these are of metal, or secured by at least two bolts, riveted or welded to the nuts on the inside;
 - (vii) hinges are made and fitted such that doors and other closing systems cannot be lifted off the hinge-pins and other fasteners are welded to the outer parts of the hinges, except where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins;
 - (ix) doors cover all interstices and ensure complete and effective closure;
 - (x) it is provided with a satisfactory device for protecting the customs seal, or so constructed that the customs seal is adequately protected.
- (6) No carrier shall transport goods in transit unless he has been licensed by the Commissioner or by a competent authority in the Member State of the Common Market for Eastern and Southern Africa.
- (6A) No carrier shall transport goods in transit unless he has installed in the vehicle used for such transport an approved electronic cargo-tracking device
- (7) *(Deleted by L.N.63/2003).*
- (8) For the purpose of paragraph (5) "exceptional load" means one or more heavy or bulky objects which, because of their weight, size, or nature, cannot normally be carried in a closed or sealed vehicle or transport unit and which can be so readily identified to the satisfaction of the proper officer.
- (9) Application for a licence under paragraph (5) shall be made in writing to the Commissioner and the licence shall be in Form C.37.
- (10) The Commissioner may grant or refuse to grant a licence, or may revoke an

existing licence, without assigning any reasons therefor and may, upon granting a licence, attach such conditions thereto as he shall think fit.

(11) If the quantity of goods in transit is found to be less than that specified in the entry, or the period allowed expires before any part of the goods is exported, the owner shall forth with pay to the proper officer the penalty to the bond, except in the case of deficiency the penalty payable shall be calculated proportionately to the deficiency unless such deficiency is accounted for to the satisfaction of the proper officer:

Provided that the payment of the penalty to the bond under this paragraph shall not absolve the owner from exporting the goods within the period allowed under paragraph (3) (a), in default of which the goods shall be liable to forfeiture unless the Commissioner otherwise directs; and

(12) On production by the owner within the period allowed by the proper officer of the quadruplicate copy of the entry and a copy of the Form C.12, duly certified by the proper officer at the port or place of exportation that the goods described therein have been exported, together with such other evidence as the proper officer may require, the deposit referred to in paragraph (3), shall, on application being made in Form C.36, be refunded to the owner, or the bond cancelled.

(13) A licence fee of five thousand shillings shall be payable per carrier and per vehicle per annum and all licences shall expire on the 31st December in the year of issue but shall be renewable on written application in the discretion of the Commissioner.

(14) Notwithstanding anything to the contrary contained in these Regulations where the Commissioner is satisfied that the non-production of satisfactory proof of exportation in respect of a part of the goods is due to circumstances beyond the control of the owner, he may refund to the owner so much of the deposit made as he deems to be appropriate to that part of the goods in respect of which such proof has been produced, or release the owner from the obligations of any bond in so far as it concerns that part.

(15) Goods which have entered Kenya overland or by inland waterways shall, on exportation by air or sea, be entered at the port or place of exportation in Form C.35 and Form C 63 in quintuplicate.

(16) If the owner wishes to enter for home use any goods which have been imported in transit and have not been exported and the importation for those goods is not prohibited or restricted, he shall apply in writing to the Commissioner; and the Commissioner, if he is satisfied with the reasons given, may allow entry to be made accordingly and shall refund the deposit given or cancel the bond executed in respect of those goods:

Provided that-

(i) a request under this paragraph shall be granted unless it is made within the period allowed under paragraph (3) (a);

(ii) the goods are physically deposited in a customs area.

(17) This regulation shall apply, *mutatis mutandis* to passengers' baggage imported in transit, save that the receipt given by the proper officer that a bond has been furnished shall take the place of the entry required under this regulation.

(18) Any person who contravenes the provisions of this regulation shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings and any goods in respect of which the offence is committed shall be liable to forfeiture.

(19) For the purpose of this regulation and regulation 96A -

"carrier" means the person actually transporting transit goods or in-charge of or responsible for the operation of a vehicle;

"Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States established by Article 2 of the Treaty.

(20) An agent who fails to reexport transit goods or to cancel bond-in-force within seven days from the date of expiry of the transit period or within such longer period as the Commissioner may, in any particular case, allow shall be guilty of an offence and liable to a fine not exceeding one million five hundred thousand shillings.

Goods in transit to or from a Northern corridor State.
L.N.6/1999

96A. (1) In addition to the requirements of regulation 96, goods in transit destined to or consigned from a Northern Corridor State shall be entered in Form C. 35A and Form C 63 in quadruplicate at the customs office of departure prior to the commencement of a transit operation.

(2) In the case of goods destined in transit to a Northern Corridor State the endorsement on the quadruplicate copy of Form C. 35A by the customs authorities in the office of entry in the subsequent transit country that the goods described therein have been received in that country shall be accepted as the necessary evidence in support of the application made in Form C. 36 for refund of the deposit or cancellation of the bond.

(3) For the purposes of this regulation -

"Northern Corridor" means the transport infrastructure and facilities in East Africa served by the port of Mombasa;

"Northern Corridor State" means the countries utilizing the Northern Corridor, namely, Kenya, Uganda, Rwanda and Burundi;

"customs transit operation" means the transport of goods from an office of departure to an office of destination under customs transit;

"office of departure" means customs office at which a customs transit operation commences;

"office of destination" means a customs office at which a customs transit operation is terminated.

Transit godowns.
L.N.41/1997,
L.N.99/1997.
L.N.99/1997
L.N.91/2001 L.N.
48/2004

96B. (1) No goods entered in transit be stored in any premises, pending re-exportation, unless the owner or occupier of the premises holds a valid licence issued in accordance with this regulation, to use such premises as a transit godown.

(2) Any owner or occupier of any premises who permits such premises to be used in contravention of paragraph (1) of this regulation shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings, and any goods in respect of which the offence has been committed shall be liable to forfeiture.

(3) An owner or occupier of any premises intending to use the premises as a transit godown shall, before commencing such use, apply to the Commissioner for a licence.

(4) An application under paragraph (3) shall be in Form C26A and shall be accompanied by a plan of the premises to be licensed and a non-refundable application fee of five thousand shillings.

(5) In considering the application, the Commissioner may require the applicant to supply such additional information in support of the application as the Commissioner may consider necessary.

(6) The Commissioner may, subject to this regulation and to the payment of a fee of one hundred thousand shillings, issue a licence in Form C27A to the applicant, subject to such conditions as he may deem necessary.

(7) A licence issued under paragraph (6) shall expire on the 31st December next following the date of issue but shall be renewable for a further period of twelve months.

(8) The Commissioner may refuse to grant or renew a licence under this regulation if satisfied that -

(a) the information contained in the application therefor is false or untrue in any material particular; or

(b) the premises in respect of which the application is made, do not meet any of the requirements of this regulation.

(9) The Commissioner may cancel or suspend a licence under this regulation if the licensee is in breach of any condition attached to the licence or contravenes any of the requirements of this regulation.

(9A) The Commissioner may revoke the licence granted in respect of a transit godown where -

(a) the licensee of such transit godown fails to account to the satisfaction of the Commissioner for any goods found therein; or

(b) in any calendar year, the average monthly cargo cleared through the transit godown is less than one hundred containers.

(10) No premises shall be licensed as a transit godown unless -

(a) they are located in a designated industrial area; and

(b) the Commissioner is satisfied that the construction and size of the premises are suitable for the storage of transit goods.

(11) No premises licensed as a transit godown shall be used for the storage of goods other than transit goods.

(12) Goods stored in a transit godown shall be subject to the provisions of regulations 96 and 96A.

(13) Where goods stored in a transit godown include sugar, the licensee shall provide a specific portion of the godown to the satisfaction of the Commissioner, for the storage of such sugar.

(14) A licensee who uses or permits to be used his transit godown in contravention of this regulation shall be guilty of an offence and shall be liable to a fine not exceeding one million five hundred thousand shillings and any goods in respect of which the offence is committed shall be liable to forfeiture.

Entry and bond for transshipment. C. 38. CB. 9. L.N.6/1999

97. (1) Goods reported for transshipment shall be entered in Form C.38 and Form C 63 in quintuplicate, and a security shall be furnished in Form CB.9 or by cash deposit.

(2) Goods which have not been reported for transshipment and have been unloaded may be entered for transshipment in accordance with the provisions of this regulation if -

(a) they have not been entered under provisions of the Act and these Regulations;

(b) the master or agent applies for and obtains the permission of the proper officer to amend the inward report of the importing aircraft or vessel.

(3) Goods reported for transshipment shall be entered and re-shipped within twenty-one days of the date of the commencement of discharge of the importing aircraft or vessel or within such further period as the proper officer may allow.

Transshipment direct.

98. Goods entered for transshipment may, with the permission of the proper officer and subject to such conditions as he may impose, be transhipped direct from the importing aircraft or vessel, if the goods are reported by the importing aircraft or vessel for transshipment

PART VI - IMPORTATION AND EXPORTATION BY POST

Commissioner may waive entries for goods imported by post.

99. (1) When goods are imported in postal articles the Commissioner may accept for the purpose of assessing the duty on those goods, in lieu of the entry required under the provisions of the Act and these Regulations, the customs declaration on the form provided by the postal administration in the country of origin.

(2) In the case of goods exported by post, any form or label affixed to the parcel on

which a description of the contents and their value is declared shall be deemed to be the entry required under the provisions of the Act and these Regulations.

Customs declaration on postal articles.

100. (1) A customs declaration made out by the sender of any goods imported by parcel post shall accompany, or be securely attached to, each parcel or to one of the parcels when the goods are packed in more than one parcel.

(2) The declaration shall give a correct description of the quantity or weight, the country of origin and the value of the contents of the parcel or consignment.

(3) If a parcel contains goods of a commercial nature an invoice or a statement showing full particulars of the goods shall be enclosed in the parcel; and if the goods are enclosed in two or more parcels an invoice or a statement showing full particulars of the goods shall be enclosed in one of the parcels which shall be clearly marked "Invoice (or statement) enclosed".

(4) If the invoice or statement cannot be conveniently enclosed inside the parcel it may be securely attached to it.

Production of postal articles.

101. All postal articles shall, if the Commissioner so requires, be produced by an officer of the Post Office to the proper officer for examination, either at the port of arrival in, or departure from, Kenya as the case may be, or to such other place in Kenya as the Commissioner may direct, for the purpose of which the officer of the Post Office shall be deemed to be the agent of the importer or exporter.

Detention of postal articles. Cap.411. L.N.91/2002.

102. In any case where a postal article, or any part of its contents, is found on examination to be conveyed otherwise than in conformity with the provisions of the Posts Office Act, or not to agree with any declaration which accompanies, or is affixed to, that postal article, or with any entry, invoice or other document purporting to relate to its contents and which may be either transmitted therewith or produced by the addressee, that postal article and all its contents shall be deemed to be goods imported or exported contrary to the provisions of the Act and these Regulations and shall be dealt with as provided therein.

Uncleared postal articles. L.N.91/2002

103. If the addressee of a postal article neglects to claim that postal article, and if that postal article is not delivered to an alternative addressee or returned to the sender within such time as may be specified in the laws relating to the Post Office, or if the addressee refuses to pay the duty, if any, in respect of the goods contained in that postal article, the Post Office shall send the postal article to the customs for deposit in the customs warehouse, there to be dealt with in accordance with section 34 of the Act.

Duties to be paid to the customs. L.N.91/2002.

104. The duty collected by the Post Office shall be paid to the Commissioner at such times and in such manner as may be notified by him.

PART VII - DEPARTURE AND CLEARANCE OF AIRCRAFT AND VESSELS

Form of clearance of vessel. C.39.

105. The certificate of clearance of a vessel departing to a foreign port shall be in Form C.39.

Outward manifest of vessel. C.2.

106. (1) The outward manifest of a vessel shall be in Form C.2 and shall contain particulars of all cargo shipped in accordance with the description thereof in the

relevant bill of lading or freight note, together with the weight or cubic measurement of the cargo in the manner prescribed in regulation 17.

(2) Each page of the outward manifest, other than that on which the declaration is signed, shall be initialled by the master or his agent, and the master or agent shall number and seal together the pages and shall, if required, sign the outward manifest in the presence of the proper officer.

Clearance and general declaration for aircraft.
C.4. C.5. C.4.

107. (1) Before departing to a foreign port the master of an aircraft shall

deliver to the proper officer a general declaration in Form C.4 in duplicate: and one copy of that Form, signed by the proper officer, shall be returned to the master and shall be the certificate of clearance of the aircraft.

(2) The report of cargo shall be made in Form C.5 which shall be attached to the general declaration in Form C.4; and each page of the cargo manifest in Form C.5 shall be initialled by the master or his agent, and the master or agent shall number and seal the pages together and seal them to the general declaration and shall, if required, sign that general declaration in the presence of the proper officer.

Shipments short or in excess of manifest.
C.10. C.5. C.2.

108. On application being made in Form C.10 the proper officer may allow the master or agent of an aircraft or vessel to amend the cargo manifest in Form C.5 or the outward manifest in Form C.2, as the case may be, in respect of any goods found to have been shipped short or in excess of the manifest.

Separate manifest for each port. C.2.

109. (1) A separate outward manifest in Form C.2 and, if required, a passenger list, shall be delivered at each port or place of departure in Kenya and if no cargo is loaded or no passengers embark at any port or place, a nil Form C.2 or passenger list shall be delivered.

C 4. C.5.

(2) A separate general declaration in Form C.4 and cargo manifest in Form C.5 for each aircraft shall be delivered at each port or place of departure in Kenya, but if no cargo is loaded a nil Form C.5 need not be delivered.

PART VIII - CARRIAGE OF GOODS COASTWISE

Coastwise clearance and Transire. C.41. C.39.

110. The transire for coastwise cargo carried by aircraft or vessels under section 82 of the Act, and the combined clearance and transire for coasting aircraft or vessels and their cargoes under section 84 of the Act, shall be in Form C.41:

Provided that in the case of aircraft or vessels departing to foreign ports via a port or place in Kenya, a certificate of clearance in Form C.39 shall be required.

Separate transires for each port.

111. When cargo is loaded in an aircraft or vessel for carriage coastwise to more than one port or place, separate transires, in triplicate, shall be prepared for each port or place.

Unloading and examination of coastwise cargo.

112. (1) Coastwise cargo shall not be loaded on an aircraft or vessel for carriage coastwise or removed from a customs area or a transit shed after it has been unloaded or landed without the prior authority of the proper officer.

(2) Any person who contravenes this regulation shall be guilty of an offence.

Sufferance wharves and unapproved places. C. 12.

113. Where the master of a coasting aircraft or vessel wishes to proceed to a sufferance wharf, or any place other than an approved place of loading or unloading, to load or unload coastwise cargo, he shall apply to the proper officer for permission in Form C.12.

Accommodation and transport to be provided.

114. (1) The proper officer may grant permission under regulation 113 subject to such conditions and directions as he may see fit to impose, and subject to the master or his agent defraying the cost of or providing accommodation in accordance with section 170 of the Act and transport overland or by sea, as the proper officer may decide, from and to his proper port, for each officer whose services the proper officer may deem necessary at the sufferance wharf or other place.

(2) The proper officer may require the master of an aircraft or vessel proceeding to a sufferance wharf or other place to deposit with him in advance a sum sufficient to cover the expenses referred to in paragraph (1).

Transire to be delivered before loading or unloading.

115. Save with the written permission of the proper officer, no coastwise cargo shall be loaded on, or unloaded from, a vessel of less than two hundred and fifty tons register, until the master has delivered to the proper officer the transire relating to the cargo to be loaded or unloaded.

Amendment of transire.

116. The proper officer may permit the master or agent of an aircraft or vessel on application to amend the transire if any cargo is found to be in excess or short of that described therein.

General transires. C.42.

117. General transires in Form C.42 may, upon application, be granted by the proper officer for periods not exceeding six months to vessels trading regularly in local produce between certain specified ports under the following conditions -

(a) the original general transire shall be carried on board, the vessel and shall be available for inspection by any officer at any time;

(b) no restricted or prohibited goods or goods which have been entered into home use shall be carried except as provided for in subparagraph (e);

(c) within twenty-four hours of arrival at any port and before he allows any goods to be unloaded, the master shall deliver to the proper officer a correct account, in duplicate, of the cargo to be discharged at that port in respect of which he holds a general transire;

(d) the master of a vessel shall not carry any goods on which royalties are payable unless he has first obtained a pass note issued by the proper officer in respect of those goods; and restricted or prohibited goods and goods which have been entered into home use found on board a vessel having a general transire (except as provided for in subparagraph (e)), shall be seized;

(e) if the master of a vessel wishes to ship restricted or prohibited goods or goods which have been entered into home use, he shall deliver to the proper officer at the port at which the goods are loaded a transire in triplicate in respect of those goods and shall comply with regulations 110 to 112.

Pass note for duty paid goods carried coastwise. 118. Duty paid goods shipped from one port in Kenya for subsequent discharge within Kenya shall be produced to the proper officer prior to shipment; and the officer shall, on request, issue in respect of the goods produced to him a pass note which shall be delivered to the proper officer at the port of discharge as a warrant for free admission of the goods specified therein.

PART IX - REGISTERED USERS

Application for registration. C. 40. 119. Any person who wishes to be a registered user for purposes of an order under section 145 of the Act shall apply in Form C.40.

Acceptance of registration. 120. (1) If the application is completed to his satisfaction and the premises including the operations therein meet with his approval, the Commissioner shall -

(a) register the applicant as a registered user; and

(b) register the premises to be used by the registered user.

(2) Should the Commissioner decline to register an applicant and his premises in accordance with paragraph (1), he shall advise the applicant accordingly.

Validity of registration. 121. Registration under regulation 120 shall become void three months after the date of registration, or on such other date as the Minister may in any particular case direct, unless an appropriate order is first made, in which case registration shall lapse at the end of the period of validity of the order.

Storage and use. 122. (1) The Commissioner may require a registered user -

(a) to keep any goods in respect of which an application for refund of duty is to be made on registered premises and in such room, store or other place as may be specified; and

(b) to provide on the registered premises for the use of an officer such facilities as may be necessary for the inspection, weighing or other checking of goods in respect of which no application for refund of duty is to be made.

(2) Goods on which refund of duty is intended to be applied for as declared on the prescribed import entry shall not be removed from or used outside the registered premises, or used for purposes other than those specified in the relative order, except with the written consent of the Commissioner who may refuse to grant consent without assigning a reason therefor.

Registered user's stock book. 123. (1) A registered user shall keep a customs stock book in such form as may be approved by the Commissioner showing full particulars of all goods in respect of which refund of duty will be claimed and of the use of those goods.

(2) Stock and accounts relating to the goods shall be kept in such a manner that they can be readily checked by the proper officer.

Monthly returns. 124. Every registered user shall transmit to the Commissioner within seven days after the end of each month a certified copy of the entries in the customs stock book relating to the preceding month.

Manufacturing operations. 125. A registered user shall, if required by the Commissioner, carry out under the supervision of the proper officer at such reasonable times as the Commissioner may

deem necessary, any manufacturing operations in his registered premises in which goods subject to refund of duty are being used.

Books, documents, etc.

126. The premises of the registered user together with the books, documents and stocks shall be accessible at all times for inspection by the proper officer.

Commissioner may dispense with certain requirements.

127. Notwithstanding anything contained in these Regulations, the Commissioner may, in order to meet the exigencies of any special case, dispense, wholly or in part, with any requirements imposed thereunder on a registered user.

Control of goods entering the export processing zone.
L.N.6/1999

127A. (1) All goods imported from foreign territory into the export processing zone through the customs territory, shall be entered in Form CPZ1 and Form C 63 in sextuplicate; and a bond in Form CPZB shall be given.

(2) All goods shall be consigned to the proper officer in charge of the relevant export processing zone where goods are destined in sealed containers, boxes or vehicles except in the case of exceptionally bulky loads which cannot be contained in such containers or vehicles, and two copies of the entry in Form CPZ1 and Form C 63 shall accompany the goods.

(3) Examination of goods shall be carried out at the premises of the enterprise or within the export processing zone where examination facilities are provided except that should the Commissioner have any reasonable cause, he may direct a proper officer to carry out examination of such goods at the point of importation within the customs territory or before entry into the export processing zone.

(4) One copy of the Form CPZ1 and Form C 63 duly certified by the proper officer as to the receipt of the goods in the export processing zone shall be returned to the owner for presentation at the port of importation for the purpose of cancellation of the security bond.

(5) Goods imported into the export processing zone from the customs territory shall be entered in Form C. 29 and Form C 63 in sextuplicate by the exporter.

(6) All export processing zone enterprises shall be required to maintain stock records of the raw materials as well as the finished product in the format set out in Form CPZ3 or other approved format.

(7) Every export processing zone enterprise shall maintain stock control records and shall produce the records for inspection by the proper officer.

(8) If, on inspection of the records and physical stocktaking, goods are found missing and the enterprise cannot give a satisfactory explanation to the proper officer, then the enterprise shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or twice the amount of duty payable on the missing goods, whichever is the higher.

(9) Every export processing zone enterprise shall submit monthly returns on stocks held in the Form CPZ3 to the proper officer.

(10) All goods intended for export from the export processing zone shall be entered in Form CPZ2 and Form C 63 in sextuplicate; and a bond in Form CPZB shall be given.

(11) All such goods shall be produced to the proper officer for the purpose of examination and of sealing of the containers, box or vehicle after which the proper

officer shall allow the goods to leave the export processing zone; and two copies of the entry shall accompany the goods to the port of exportation within the customs territory.

(12) No further examination of the goods shall be carried out at the final port of exportation within the customs territory, unless the proper officer finds the seals tampered with, or on any other reasonable grounds.

(13) One copy of the Form CPZ2 and Form C 63 duly certified by the proper officer as to the exportation of the goods, shall be returned to the owner for presentation to the proper officer at the export processing zone for the purpose of the cancellation of the security bond.

(14) Goods exported to the customs territory from the export processing zone shall be treated in the same manner as if such goods were imported from a foreign country and shall be entered in Form C.15 and Form C 63 in sextuplicate.

(15) Any goods being moved from one export processing zone to another export processing zone shall be entered in Form CPZ2 and Form C 63 and the bond in Form CPZB shall be given.

(16) One copy of the Form CPZ2 and Form C 63 duly certified by the proper officer at the receiving export processing zone shall be returned to the owner for presentation to the proper officer at the despatching export processing zone for the purpose of cancellation of the security bond.

(17) Where goods are being removed from one enterprise to another enterprise, within the same export processing zone, then the enterprise removing such goods shall advise the proper officer accordingly.

(18) The plant, machinery and equipment may be removed for repairs, servicing or maintenance from an export processing zone to the customs territory.

(19) The plant, machinery and equipment shall be accorded temporary importation facilities in the customs territory and shall be entered in Form C.43 in quadruplicate and a bond in Form CB. 10 shall be given.

(20) Where, under these Regulations, security is required to be given, then the security may be given to the satisfaction of the proper officer -

(a) by bond in such sum and subject to such conditions and such sureties as the proper officer may reasonably require;

(b) by cash deposit; or

(c) partly by bond and partly by cash deposit.

(21) For the purpose of this regulation, a general bond executed by an export processing zone developer or operator shall be accepted to cover movements of imports and exports between the enterprises within a particular export processing zone and the ports of importation or exportation including movement between export processing zones except that any enterprise may execute a bond to cover its own

goods in transit.

(22) As far as possible, disposal or destruction of wastes and residues resulting from the manufacturing process shall be carried out within the export processing zone under the supervision of the proper officer.

(23) If there are no proper facilities of disposal within the export processing zone, the wastes may be destroyed in the customs territory on application to the proper officer.

(24) After the destruction of the wastes, the proper officer shall issue a certificate of destruction.

(25) In case of sale of wastes or rejects in the customs territory, the movements of such wastes or rejects shall be subjects to the normal importation procedures in the customs territory.

(26) All personnel and vehicles entering in or going out of any export processing zone shall be subject of search by the proper officer.

Specification for vans transporting dutiable goods.

127B. (1) The following specification shall be complied with before a locked van is approved for the transportation of dutiable goods -

(a) place for storage of goods shall be totally covered;

(b) the body of the vehicle shall be made of steel or fibreglass;

(c) only one door shall be allowed and the door shall be equipped with a facility for locking and sealing;

(d) iron grilles shall be fixed to the glass windows of the vehicles; and

(e) the section for the driver and passengers shall be separated from the storage area.

(2) The locked van approved for the transportation of dutiable goods shall not have secret compartments and shall be inspected and have a valid permit issued by the proper officer.

Transportation of small packages and boxes.

127C. (1) Small packages and samples may be transported in locked boxes made of steel sealed by customs in any vehicle and the proper officer assigned to an export processing zone may approve the use of locked boxes if satisfied that the boxes are suitable for the transportation of dutiable goods.

(2) For the purposes of identification, locked boxes shall be given serial numbers by the approving officer and the number and name of the export processing zone enterprises shall be written on locked boxes in indelible ink.

PART X - CONTROL OF MANUFACTURE. OF EXCISABLE GOODS OTHER THAN SPIRITS

Licensing of Premises and Plant

Application for licence to manufacture. E.1 .
EB.1 E. 2. L.N.91/2001

128. (1) Application for a licence to manufacture goods shall be made in Form E.1 in duplicate to the Commissioner.

L.N. 48/2004

(2) When the Commissioner has approved the entry of premises made by the applicant in accordance with refutation 130, the applicant shall -

(a) pay a licence fee of fifty thousand shillings annually:

Provided that-

(i) in the case of breweries, wineries, distilleries, denaturers, compounders, rectifiers, and tobacco and cigarette manufacturers, the fee shall be one hundred thousand shillings annually; and

(ii) in the case of a licence issued in the course of the year, the remaining part of that year shall be deemed to be a full year.

(b) furnish such security as the Commissioner may require in Form EBS.

(3) A licence shall be in Form E.2.

Transfer of licence. E.
3.

129. (1) Any licensee who wishes -

(a) to transfer his licence to any other person;

(b) to transfer his factory to any other place;

(c) to manufacture another class of excisable goods in his factory on his ceasing to manufacture therein the class of excisable goods specified in the licence,

shall make application in Form E.3 in duplicate to the Commissioner.

(2) The fee for the transfer of a licence from a licensee to any other person shall be two hundred shillings.

Entry of premises and
plant. E.4. L.N. 48/2004

130. (1) When the application for a licence has been approved the applicant shall furnish the Commissioner with -

(a) an entry in Form E.4 in duplicate in which the applicant shall declare the particulars of his factory required by section 97 of the Act;

(b) a plan, in duplicate, of each building, room or place to which the application for a licence relates and the situation of that building, room or place in relation to other buildings, rooms or places in the vicinity:

(c) specifications and particulars, in duplicate, of each item of plant to be used in the manufacture, preparation for sale, or storage, of materials or excisable goods.

(1A) No premises shall be licenced as an excise factory unless they are located in a designated industrial area.

(1B) The Commissioner may revoke any licence issued in respect of an excise factory where, in any calendar year, the average monthly output in duties and taxes is less than

five hundred thousand shillings.

(2) Where the application is for the renewal of a licence and there have not been any alterations in the buildings, rooms, places or items of plant since the issue of the previous licence, the details referred to in paragraph (1) need not be furnished.

Definition of licensee.

130A. In this part, "licensee" means a licensee other than a brewer.

Identification of an excise factory.
L.N.63/2003

130B. (1) An excise factory shall be distinguished by an identification number allocated by the Commissioner.

(2) The words "CUSTOMS EXCISE FACTORY" and the number allocated to the factory shall be clearly marked on the principal entrance to the factory or such other prominent place as the proper officer may approve and shall be removed when the factory ceases to manufacture excisable goods.

(3) Any person who contravenes the provisions of this regulation shall be guilty of an offence.

Provisions Relating to the Manufacture of Beer

Brewing book. E.5.

131. A brewing book shall be in Form E.4.

Declaration of brands of beer.

132. (1) No brewer shall bottle or otherwise pack any beer for sale unless -

(a) he has made a declaration in writing to the Commissioner in respect thereof in such form and containing such particulars as the Commissioner may require; and

(b) the Commissioner has approved the prescribed number of litres per container of beer.

(2) In this regulation -

"container" means any case, carton or other container in which bottled or canned beer is packed or any keg, drum or cask containing beer for subsequent sale;

"prescribed litres" means the litres prescribed in writing by the Commissioner.

Production accounts.

133. Every brewer shall, at the close of business each day and within twenty-one days after the end of every month or, in both cases, within such longer period of time as may be allowed by the proper officer and in such form as the Commissioner may require -

(a) prepare an account of the production of beer bottled or packed for sale on that day; and

(b) prepare and submit to the proper officer a monthly production summary in respect of that month.

Determination of original gravity.

134. (1) The gravity of any liquid at any time shall be ascertained by the use of a saccharometer of a type approved by the Commissioner.

(2) Where, for the purposes of these Regulations, it is necessary to ascertain the original gravity of worts in which fermentation has commenced, then that gravity shall be ascertained in the following manner -

(a) a sample shall be taken from any part of the worts and a definite quantity thereof by measure at the temperature of 15.55 degrees Centigrade shall be distilled;

(b) the distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation and the gravity of each shall be ascertained;

(c) the number of degrees by which the gravity of the distillate is less than the gravity of distilled water shall be deemed the spirit indication of the distillate;

(d) the degrees of original gravity standing opposite to the spirit indication in the table set out in the Second Schedule added to the gravity of the residue shall be deemed to be the original gravity of the worts.

Removal of beer in bulk.

135. No person shall transfer any beer in bulk to another brewery or licensed premises for bottling or filling unless prior notice thereof has been given in the brewing book at least twenty-four hours before the transfer is made; and a brewer shall maintain a record of transfers in such form as the Commissioner may require.

Bond security. EB. 2.

136. The Commissioner may require a brewer to provide security in Form EBS for the purpose of securing the duty payable on beer being transferred in bulk to another brewery or licensed premises and on which duty has not been paid.

Monthly excise account. E. 6.

137. A monthly excise account, in quadruplicate, in Form E.6 shall be submitted by the brewer to the proper officer; and a copy of the monthly production account shall accompany the excise summary.

Provisions Relating to the Manufacture of Excisable Goods Under this Part Other than Beer

Container for cigarettes and manufactured tobacco.

138. For the purpose of this head, "container" means any tin box or other immediate container in which manufactured tobacco or cigarettes are packed for sale.

Stock book E. 7.

139. The stock book referred to in section 109 of the Act for excisable goods shall be in Form E.7 or such other form as the Commissioner may approve.

Declaration of brands of manufactured tobacco.

140. A licensee shall not manufacture any tobacco until -

(a) he has made a declaration in writing to the Commissioner in respect thereof in such form and containing such particulars as the Commissioner may require; and

(b) the Commissioner has approved the declaration.

Conditions affecting containers of manufactured tobacco.

141. (1) No person shall remove, or cause or allow to be removed, to or from the stock room any manufactured tobacco unless -

- (a) the tobacco is securely enclosed in an unbroken container; and
- (b) the container has printed thereon the name of the manufacturer and the place of manufacture, or such other trade mark or description as will identify the manufacturer of the tobacco packed in the container:

Provided that in the case of tobacco -

- (i) intended solely for export; or
- (ii) subject to any remission, rebate or refund of excise duty in accordance with the provisions of the Act,

the tobacco shall not be removed from the stock room except with the prior authority of the Commissioner and subject to such conditions as he may impose.

(2) Manufactured tobacco packed or offered for sale under paragraph (1) shall be so declared in the monthly excise account, in quadruplicate, in Form E. 8.

Declaration of brands of cigarettes.

142. A licensee shall not manufacture any cigarettes until he has made a declaration in writing to the Commissioner in respect thereof in such form and containing such particulars as the Commissioner may require:

Provided that, subject to such conditions as he may impose, the Commissioner may authorize any licensee to carry out experimental operations.

Packing and offering for sale of cigarettes. L.N.67/2000 L.N.58/2001 L.N.17/2003

143. (1) No container of cigarettes may be packed or offered for sale unless it contains cigarettes in respect of which a declaration has been made and approved in accordance with regulation 142.

(2) The cigarettes contained in any one container shall be uniform in size.

(3) No cigarettes, whether imported or locally manufactured shall be offered for sale unless the container thereof bears an excise stamp issued under authority of the Commissioner.

(4) Deleted 2008

Provisions relating to application for excise stamps. L.N.91/2001.

143A.Deleted 2008

Cigarettes for export. L.N.17/2003

144. Notwithstanding regulation 142, a licensee may with the proper authority of the Commissioner pack and offer for sale any cigarettes which are -

- (a) intended solely for export; or
- (b) subject to any remission, rebate or refund of excise duty in accordance with the provisions of the Act,

and those cigarettes shall be so declared in the monthly excise account, in quadruplicate, in Form E. 8.

(c) Deleted 2008

(d) cigarettes manufactured for sale in the Navy, Army, and Air Force Institute (NAAFI), the Armed Forces Canteen Organization Stores (AFCO) and Duty Free or Diplomatic Stores, shall be-

(i) legibly marked "NAAFI", "AFCO" or "DUTY FREE", as the case may be, on the cigarette itself; and

(ii) packed in containers or packets marked "NAAFI", "AFCO" or "DUTY FREE", as the case may be;

Provided that the requirements of regulation 143 as to the affixing of excise stamps shall not apply to the cigarettes referred to in paragraphs (c) and (d) of this regulation.

Conditions affecting containers of cigarettes. L.N.58/2001.

145. No person shall remove, or cause or allow to be removed, to or from a stock room any cigarettes unless -

(a) the cigarettes are securely enclosed in an unbroken container;

(b) the cigarettes comply with the declaration made in respect thereof in accordance with regulation 142; and

(c) the container has printed thereon the name of the manufacturer and the place of manufacture, or such other trade mark or description as will identify the manufacturer of the cigarettes packed in the container:

(d) deleted 2008

(e) the material wrapping the container for wholesale purposes has printed thereon the words "FOR EXPORT ONLY", if the cigarettes are for export or "FOR USE IN KENYA", if the cigarettes are for sale in Kenya or "Duty Free" if the cigarettes are for sale in Duty Free and Diplomatic Shops.

Duty on goods for export diverted for sale in Kenya. L.N.17/2003.

145A. A manufacturer of excisable goods shall be liable for the payment of excise duty in respect of any excisable goods manufactured for export which are diverted into or offered for sale in Kenya:

Provided that nothing in this regulation shall make the manufacturer liable for the payment of duty on any such goods found on a road or route notified by the Commissioner in the Gazette under section 9 of the Act and loaded onto a vehicle licensed to convey goods under customs control.

Materials account. E. 9.

146. The materials account which the licensee may be required to keep in accordance with section 111 of the Act shall be in Form E.9 or such other form as the Commissioner may approve.

Packing and making of wine.

147A. (1) No person shall remove, or cause, or allow to be removed, to or from the stock room any wine unless -

(a) such wine is packed in securely closed bottles, or other immediate containers

approved by the Commissioner, of uniform size; and

(b) the bottle or other immediate container has printed on its main label the name of the manufacturer and the place of manufacture.

(2) If any wine contains any imported wine which has been mixed therewith the manufacturer shall declare on the main label of each bottle or other immediate container the quantity of imported wine expressed as a percentage of the total quantity of wine in each bottle or other immediate container.

(3) The quantities of wine to be recorded in the stock book (Form E. 7) and other records required to be kept by the manufacturer shall be expressed in litres and fractions thereof and related to the number of bottles and cases or other approved containers.

Conditions for
manufacture of
matches.

148. (1) In this regulation -

"container" means a tin, box or other container in which matches are packed for sale;

"packet" means a multiple of containers packed together to form one unit for sale;

"package" means a multiple of packets packed together to form one unit for sale.

(2) A licensee shall not manufacture any matches until -

(a) he has made a declaration in writing to the Commissioner in respect thereof in such form and containing such particulars as the Commissioner may require; and

(b) the Commissioner has approved the declaration.

(3) Every person licensed to manufacture matches shall keep -

(a) an account in a packing book in a form approved by the Commissioner; and

(b) a stock book in the Form E.7A.

(4) The licensee shall each day enter in the packing book an account of -

(a) all matches manufactured in his factory on that day;

(b) the date on which the matches are packed into the container;

(c) the number of the gross of the containers packed, classified according to the number of matches in each container;

(d) such further particulars as the proper officer may require.

(5) The licensee shall keep the packing book in some part of the factory so that it shall at all times be available for inspection by the proper officer.

(6) No person shall remove any matches from a factory until an account thereof has

been duly entered in the packing book.

(7) The licensee shall enter in the stock book daily, and at such other times as may be required by the proper officer, full particulars of -

(a) all matches packed into cases in which they are to be deposited in the stock room; and

(b) the separate quantities of any matches to be delivered from the stock room, with the date of manufacture and delivery, before they are so delivered.

(8) The licensee shall balance the account in the stock book at the end of each month.

(9) A monthly excise account in duplicate, in the Form E.9, shall accompany the transcript required to be submitted by the licensee.

Marking of packages containing matches.

148A (1) The licensee shall, if the Commissioner so requires, mark each package in which matches are packed with -

(a) the number of containers in each packet;

(b) the number of packets in each package; and each case with -

(a) the number of packages therein;

(b) the number of gross of the containers therein;

(c) a factory number or distinguishing letters.

Provision of secure compartment for matches.

148B (1) If the Commissioner so requires the licensee of a factory in which matches are manufactured shall provide in the factory, to the satisfaction of the Commissioner, a secure compartment partitioned off from the rest of the factory for the storing of matches in containers, packets or packages which have not been packed in cases and deposited in the stock room before the close of the day.

(2) The secure compartment shall be so constructed that it can be locked by a responsible employee of the licensee and, if necessary, by the proper officer.

(3) Where the licensee is required to provide a secure compartment, he shall at the close of each day remove to the secure compartment all matches which are in containers, packets or partly filled packages, which have not been packed into cases and deposited in the stock room.

(4) All matches in the secure compartment shall -

(a) be arranged and stored in such a manner as to allow a proper officer easy access thereto; and

(b) be produced, on demand, to a proper officer.

Offences.

148C. Any person who contravenes any of the provisions of regulations 140 to 148 inclusive shall be guilty of an offence.

Marking of excisable goods.

Provisions Relating to all Excisable Goods Manufactured Under this Part

149. Where any excisable goods are manufactured for export or are subject to a remission, rebate or refund of excise duty in accordance with the provisions of the Act, and those goods are packed in a container which has printed thereon a trade mark or description under which the goods are offered for sale in Kenya, then that container, and the excisable goods packed in that container, shall, if the Commissioner so requires, be marked in a manner approved by the Commissioner which will enable the goods to be distinguished from goods offered for sale in Kenya.

Delivery of certain excisable goods from stock room.

150. (1) Subject to paragraph (2), no person shall deliver, or cause or allow to be delivered, from a stock room any excisable goods except during the following hours - Days other than Saturdays,

PART XI - DISTILLATION, COMPOUNDING, RECTIFICATION AND DENATURING OF SPIRITS
General Provisions

Application for licence. E.1.

151. (1) Application for a licence to manufacture or denature spirits shall be made in duplicate in Form E. 1 to the Commissioner.

(2) At the same time as applying for a licence the applicant shall make application to the Commissioner for approval of his processes under regulation 152 and for approval of his entry of premises under regulation 153.

(3) When -

(a) the Commissioner has approved the applicant's processes and entry of premises; and

(b) the applicant has paid the licence fee of three thousand shillings per annum or eight thousand seven hundred shillings triennially;

Provided that for a licence issued in the course of the year, the remaining part of that year shall be treated as a full year;

(c) has furnished such security as the Commissioner may require in Form EBS, the Commissioner shall issue a licence in Form E.2:

Provided that a distiller shall not be required to pay any further fee for the grant of a licence to rectify or denature spirits manufactured by himself.

Approval of processes.

152. For the purpose of obtaining the Commissioner's approval of his processes the applicant shall -

(a) make written application to the Commissioner for approval of his processes and of all appliances, stills, vats, vessels, utensils, pipes and fittings which he intends to use; and

(b) deliver with the application a description of all his processes, appliances, stills, vats, vessels, utensils, pipes and fittings together with a drawing or model distinctly showing the course, construction and use of all fixed pipes to be used, and of every branch thereof and cock thereon, and every place, vessel or utensil with which any such pipe connects.

Approval of entry of premises. E.4.

153. (1) For the purpose of obtaining the Commissioner's approval of his entry of premises the applicant shall make written application for approval and shall accompany the application with -

(a) an entry in Form E1 in duplicate in which the applicant shall declare the particulars of his factory required by section 97 (1) of the Act; and

(b) a plan in duplicate of each building, room or place to which the application for a licence relates, and the situation of each building, room or place in relation to other buildings, rooms or places in the vicinity.

(2) No person shall, save with the written permission of the Commissioner -

(a) make entry of a room or place for more than one purpose;

(b) use any room or place for a purpose other than that for which it has been entered; or

(c) withdraw his entry while there remains in any place mentioned therein any still or any materials prepared or fit for distillation, or any spirits.

Renewal of licence.

154. A licensee wishing to renew his licence shall make application in the same manner as if for a new licence:

Provided that the licensee shall not be required to make application for approval of his processes or entry of premises unless there has been any alteration therein since the issue or renewal of the existing or previous licence.

Transfer of licence.

155. (1) Any licensee who wishes -

(a) to transfer his licence to any other person; or

(b) to transfer his factory to any other place; or

(c) to manufacture any other class of excisable goods in his factory on his ceasing to manufacture spirits therein, shall make application in Form E.3 in duplicate to the Commissioner.

(2) At the same time as making application under paragraph (1) the applicant shall make application to the Commissioner for approval of his processes and entry of premises in all respects as required by regulation 151 (2):

Provided that where the application is for the transfer of a licence to some other person, the application shall be accompanied by an application by the proposed transferee for the approval of his processes and entry of premises in all respects as required by regulation 151 (2).

(3) Where -

(a) the Commissioner has approved the processes and entry of premises in respect of which application is made under paragraph (2) for his approval; and

(b) the application is for transfer of a licence to some other person and that person has

paid a fee of two thousand shillings for the transfer and has furnished such security as the Commissioner may require in Form EBS,

the Commissioner shall, by endorsement on the licence, allow the transfer.

(4) Notwithstanding this regulation, where a distiller is also a rectifier or denaturer, his licence to rectify or denature shall not be transferred separately from his licence to distil.

Distiller who is rectifier or denaturer.

156. Where a distiller who is also a rectifier or denaturer wishes to rectify or denature spirits manufactured by him, either in the factory in which they were distilled or in another factory adjacent thereto, he shall -

(a) make such structural alterations to any of those premises; and

(b) provide such additional equipment, as the Commissioner shall deem necessary for the exercise of proper revenue control.

Placing of vessels and utensils.

157 A licensee shall, to the satisfaction of the Commissioner, place and keep each vessel and utensil on his premises in a convenient situation easy of access for official examination and account, and so fixed as to admit of the contents thereof being accurately gauged.

Securing of premises and plant.

158 (1) A licensee shall provide all such fittings as may be required by the proper officer for the attachment of revenue locks for secure his factory and plant for excise purposes.

(2) A licensee shall not use any still, vessel, utensil, pipe or cock unless it can be secured to the satisfaction of the Commissioner.

Restriction on variation of process and alteration of plant.

159. A licensee shall not vary any process or alter, move, or add to the stills, vessels, utensils, pipes or fittings in his factory unless he has given prior notice in writing in that behalf to the proper officer, delivering to him such further drawing, model or description as may be required, and has obtained the Commissioner's approval of all such variations, alterations, movements or additions.

Plant not to be so made as to permit use in manner other than approved.

160. A licensee shall not cause or procure any cover, fastening, cock, plug, pump or pipe to be so made or used that any vessel or utensil may be employed, opened, removed, filled or emptied in any manner not approved by the Commissioner.

Distillers

Placing of vessels and pipes; painting of pipes.

161. A distiller shall, to the satisfaction of the Commissioner -

(a) fix and place every pipe used by him, unless used exclusively for the discharge of water or spent wash, so as to be capable of being examined for the whole of its length; and

(b) if so required, paint and maintain so painted, in different colours, pipes used for different purposes.

Restriction on use and possession of certain materials.

162. Except with the consent of the Commissioner and subject to such conditions as he may impose, a distiller shall not -

(a) use in the brewing or making of wort or wash any material of such a nature that the gravity of the wort or wash produced therefrom cannot be ascertained by an approved

saccharomeier; or

(b) have in his possession any wort, wash, low wines, feints, spirits or fermented liquor not brewed, made or distilled in his distillery.

Conditions governing removal of sugar and molasses from store.

163. (1) A distiller shall, before removing for use in the manufacture of spirits any sugar or molasses from the place entered as a sugar store or molasses store, give the proper officer written notice specifying the time of intended removal, and the quantity to be removed.

(2) At the time so specified the distiller shall convey the specified sugar or molasses immediately from the sugar store or molasses store to the mash tun or other entered vessel, to be there immediately used in the manufacture of spirits.

(3) The distiller shall forthwith deposit again in the sugar store or molasses store all sugar or molasses removed and not used, and shall immediately give the proper officer written advice of the quantity so deposited.

Distiller to give notice of intention to brew wort.

164. A distiller shall, at least six days before beginning to brew wort or, if he has discontinued wort for more than one month, before recommencing to brew wort, give to the proper officer a written notice specifying the day on which he intends so to brew or to recommence brewing.

Distilling periods.

165. (1) For the purpose of the charge to duty on spirits made in the distillery, a distiller shall conduct his distilling operations in periods which shall terminate at intervals not exceeding a month from the date of commencement of brewing or from the date of termination of the last preceding period, whichever is the later.

(2) A distiller shall give to the proper officer written notice of his intention to terminate a period, with a declaration in an approved form, specifying the wort or wash to be included therein, and except as otherwise approved the wort or wash shall thereupon be distilled and the stills shall be worked off and notice given to the proper officer to take account of the feints and spirits produced.

(3) A period shall be deemed to terminate when all the wort or wash specified in the distiller's declaration has been distilled and the feints and spirits produced therefrom conveyed into their respective receivers.

Distiller to give notice of intention to mash or brew.

166. A distiller shall, before he mashes any materials or brews for making wort, give to the proper officer written notice specifying the day and hour when the mashing or brewing is to be commenced.

Distiller to make declaration on completing collection of wort.

167. Immediately the collection of wort in any fermenting back is completed the distiller shall deliver to the proper officer a written declaration in an approved form specifying -

(a) the number of the back in which the wort is contained;

(b) the true original gravity of the wort; and

(c) the quantity thereof as measured by the number of dry millimetres, that is to say, by the number of millimetres between the dipping place of the back and the surface of the wort contained therein, and after the declaration has been delivered the quantity or gravity shall not be increased except as provided for in these Regulations.

Restriction on adding of yeast, etc., to wort or

168. No yeast or other matter capable of causing fermentation shall be added to wort

- wash. or wash in any vessel other than a fermenting back except with the consent of the Commissioner and subject to such conditions as he may specify.
- Distiller to give notice before making bub, etc. 169. A distiller shall, before beginning to make bub or any other composition for promoting the fermentation of wort or wash, give to the proper officer written notice, specifying the time when, and the vessel in which, the composition is to be made, the fermenting back into which it is to be put, and the quantity to be put into the back.
- Distiller to make a declaration before removing wash from a fermenting back. 170. (1) A distiller shall not remove any wash from a fermenting back unless immediately prior to removal he has given to the proper officer a declaration in an approved form specifying -
- (a) the vessels from and to which the wash is to be removed;
 - (b) the day and hour at which the removal is to be commenced; and
 - (c) the gravity of the wash at that time.
- (2) If a distiller removes wash to a wash charger other than for immediate distillation he shall immediately before commencing to remove the wash give to the proper officer a further declaration specifying the same particulars as are required by paragraph (1).
- Conditions governing mixing of wort or wash. 171. (1) A distiller shall not mix wort or wash, other than wash removed for immediate distillation, unless -
- (a) he has previously delivered the declaration required by regulation 165;
 - (b) the mixing takes place in a fermenting back or wash charger; and
 - (c) he has delivered to the proper officer written notice of his intention to mix the wort or wash, specifying the vessels which will be affected.
- (2) Immediately after the mixing has been completed the distiller shall deliver to the proper officer a declaration specifying, as regards each vessel affected, the dip and original gravity immediately before the operation and the dip and gravity immediately after the operation.
- Restriction on disposing of wash. 172. (1) A distiller shall not dispose of wash removed from a fermenting back for the recovery of yeast except in such manner as may be approved by the Commissioner.
- (2) A distiller shall give written notice to the proper officer specifying the quantity and original gravity of the wash so removed and the vessel from which it has been removed.
- (3) The Commissioner may make such allowance as in his opinion is reasonable from any charge for duty arising from the wort or wash made, on production of proof to his satisfaction that the charge arises wholly or in part on account of the removal of wash for the separation of yeast
- Distiller not to possess certain wort or wash . 173. A distiller shall not have in his possession any wort or wash the original gravity of which, as ascertained from any sample thereof taken from a fermenting back or wash charger, differs by more than two degrees from the original gravity thereof as declared by him.
- Ascertainment of gravity of wort or wash. 174. (1) The gravity of wort or wash shall be ascertained by an approved

saccharometer.

(2) When fermentation has commenced in any wort or wash so that the original gravity of the wort from which the wort or wash is made cannot be ascertained by an approved saccharometer, the gravity may be determined as provided for in the case of beer in accordance with regulation 134:

Provided that the sample taken may first be cleared from sediment by filtration.

Conditions governing disposal of feints, etc.

175. (1) Subject to the provisions of this regulation as to feints remaining from a previous distillation, or as may be approved in any case, a distiller shall keep all the produce of a period unmixed with any other matter and separate from all other produce until account has been taken by the proper officer.

(2) Any feints produced by and remaining from a previous distillation may be mixed with the low wines or feints produced by a subsequent distillation and the process of redistilling feints may be repeated as often as the distiller thinks fit.

(3) Not less than four hours before the removal of any low wines or feints from a receiver, a distiller shall give to the proper officer written notice specifying the day and hour of intended removal and immediately after the officer has taken account of the contents of the receiver they shall be removed forthwith into the proper charger:

Provided that where a distiller has secured his low wines and feints pumps to the satisfaction of the Commissioner he may at any time without notice remove low wines and feints from the receiver to a charger and redistill them.

Distiller to furnish return at end of distilling period.

176. At the end of every period the distiller shall sign and deliver to the proper officer a return, in duplicate, in an approved form specifying -

- (a) the quantity of each description of material used in making wort or wash during the period;
- (b) the quantity of wort or wash decreased or distilled during the period;
- (c) the quantity of spirits computed at proof produced during the period;
- (d) the quantity of feints remaining at the end of the period.

Removal and warehousing of spirits.

177. (1) A distiller shall not less than four hours before he intends to remove any spirits from a receiver for -

- (a) warehousing in his distiller's warehouse or in accordance with regulation 178: or
- (b) delivery in accordance with regulation 179, give written notice to the proper officer requiring him to take account of those spirits, specifying the day and hour of the intended removal, the vessel in which the spirits are contained and particulars of the purpose of removal, and immediately after the officer has taken an account of the contents they shall be dealt with in accordance with the notice.

(2) When those spirits are to be warehoused, and are contained in a receiver which is also entered as a warehouse vat, it shall be deemed to be warehoused immediately the account has been taken by the officer.

(3) The quantity found in the receiver shall in all cases be deemed to be the quantity warehoused or delivered.

(4) All the spirits produced in a period shall be warehoused or delivered from the entered premises in accordance with regulation 179 within ten days from the end of that period.

Receivers or vats used for storage of certain spirits.

178. With the consent of the Commissioner and subject to such conditions as he may impose a distiller may keep receivers or vats in any approved place on his entered premises for the storage of spirits which are subsequently to be delivered -

- (a) duty-free for an approved purpose and by an approved user;
- (b) for rectification or compounding by a rectifier;
- (c) for denaturing;
- (d) for home use after warehousing for at least three years:
- (e) for exportation,

and while those spirits are stored in that receiver or vat they shall be deemed to be in the distiller's warehouse.

Delivery of spirits from a distillery. L.N. 48/2004

179. (1) Spirits shall not be delivered from the distillery in which they were distilled or from the distiller's warehouse except on payment of duty:

Provided that spirits intended for home use shall be warehoused by the distiller for a period of three years prior to delivery.

(2) Except as permitted by the Commissioner all spirits delivered in accordance with paragraph (1) shall be accompanied by an approved removal permit in Form E8 and shall be subject to such limitations and conditions as may be specified in that permit.

(3) The distiller shall give written notice in an approved form to the proper officer before any spirits are delivered in accordance with this regulation and shall attach to the notice any removal permit or other document which may be required by these Regulations to cover that delivery.

(4) Deliveries in accordance with this regulation shall only be made in cask's or containers or by other means approved by the Commissioner and secured to his satisfaction.

(5) The Commissioner may limit the hours during which deliveries may be made in accordance with this regulation.

(6) A distiller shall submit to the proper officer the payment for the spirit delivered from his warehouse together with -

- (a) a monthly excise record in the form approved by the Commissioner; and
- (b) a monthly record of production.

Racking of spirits.

180. A distiller shall comply with the following provisions when first racking spirits

from receivers or vats into casks or containers (excluding containers attached to and forming parts of vehicles) to be used for deliveries in accordance with regulation 179 -

(a) he shall before the spirits are racked give notice thereof in writing to the proper officer;

(b) he shall not, except with the permission of the Commissioner, reduce spirits with water unless the reduction takes place prior to or at the time of -

(i) their removal from the warehouse vat for immediate delivery: or

(ii) their first racking into cask:

(c) he shall cause to be legibly cut, branded or painted with oil paint on the outside of each end of every cask -

(i) the distiller's name;

(ii) the name of the distillery or place;

(iii) the mark and number of the cask;

(iv) the number of litres the cask is capable of containing, and if that number is less than three hundred and fifty the quarters of a litre of capacity above the number of entire litres; and

(v) the year in which it is warehoused;

(d) he shall cause to be consecutively numbered all the casks warehoused in any one year, beginning with number one in that year;

(e) he shall arrange the casks in the warehouse so that the marks thereon are at all times easily visible.

Control applied to distiller's warehouse.

181. The Commissioner may specify -

(a) the type and description of vessels and other containers which may be used in a distiller's warehouse;

(b) such conditions as he may consider necessary to ensure proper excise control in respect of operations in a distiller's warehouse;

(c) conditions for, and limitations in respect of, the dilution of spirits, and the distiller shall immediately comply with any such specification.

Distiller to empty worm tubs, etc., for examination.

182. At any time when distillation is not in process the distiller shall, if so required by the proper officer, draw off the water from the worm tubs or refrigerators and these vessels shall remain empty until the officer completes his examination of the spirits pipes therein.

Removal of spirits to another distillery.

183. Except with the permission of the Commissioner upon his being satisfied as to the necessity, and subject to such conditions as he may impose, a distiller shall not remove spirits from his distiller's warehouse to another distillery.

- Prohibition of return of spirits to distillery. 184. (1) Except with the permission of the Commissioner and in accordance with any conditions which he may impose, no spirits delivered in accordance with regulation 179 shall be returned to the distillery in which they were manufactured or any other distillery.
- (2) Except as provided in subparagraph (1) a distiller shall not have on, bring to or store in his entered distillery premises or distiller's warehouse any spirits which he has not himself distilled or on which any duties of customs have been paid.
- (3) Spirits for home use or rectification or compounded by a rectifier on which excise duty has been paid or secured shall forthwith be removed from the entered distillery premises or distiller's warehouse.
- Application of certain regulations to spirits manufactured other than by distillation of a fermented liquor. 185. Regulations 161 to 184, except in so far as they apply from the nature or context thereof only to the manufacture of spirits by distillation of a fermented liquor, shall apply to the manufacture of spirits by any process, manufacture of spirits by any process.

Rectifiers

- Restrictions on rectifier. 186. (1) A rectifier shall not rectify or compound any spirits except spirits whose duty has been paid in full.
- (2) A rectifier who is also a distiller shall not rectify or compound any spirits except spirits which he has distilled in his distillery.
- (3) A rectifier shall not receive or have in his rectifying premises any methylated spirits or any materials capable of being distilled into feints or spirits.
- Rectifier ceasing to carry on trade. 187. (1) A rectifier shall not cease to carry on the trade of Rectifier rectifier until he has first notified the Commissioner in writing.
- (2) Where any person notifies the Commissioner of his intention to cease carrying on the trade of rectifier, he shall at his own expense -
- (a) dismantle and dispose of any still or other equipment used for rectification, or any part thereof, in accordance with the directions of the Commissioner; and
- (b) dispose of any spirits on his premises in accordance with the directions of the Commissioner.
- Marking of casks and containers. 188. Every rectifier shall legibly cut, brand or paint with oil colour on both ends of every movable cask or other container used in his premises for keeping or for the delivery of spirits, keep so cut, branded or painted -
- (a) his name;
- (b) the place where the rectified or compounded spirit is kept, or from where it is delivered; and
- (c) the nature and quantity of the contents:

Provided that the Commissioner may permit different markings in the case of rectified or compounded spirits delivered in bottles.

| | |
|--|---|
| Locking of still or steam pipe. | 189. The furnace door of every still, and the cock on every steam pipe, shall be kept locked when the still is not in use. |
| Unlocking of still. | 190. When a rectifier desires to have the furnace door or steam pipe of a still unlocked he shall give the proper officer not less than twelve hours' previous written notice specifying the still and the day and hour when he wishes to have the door or pipe unlocked. |
| Further notice of readiness for locking of still. | 191. If the still is not charged and ready to be locked within one hour of the time stated in the notice the rectifier shall give another notice to the proper officer specifying the time when it will be so charged and ready. |
| Charging of still. | 192. A rectifier shall, before beginning to draw off rectified spirit from a still, charge the still in the proportion of not less than seven parts in ten of the whole quantity which the still, including the head is capable of containing and shall keep the still so charged until he begins to draw off rectified spirits therefrom. |
| Time within which still to be worked off. | 193. Every still shall be worked off within sixteen hours from the time when the officer takes the gauge thereof. |
| Restrictions on working of still. | 194. (1) A rectifier shall not allow his still to be worked until the officer has examined the nature of its contents and has secured the still by locking the still fastenings. (2) A rectifier shall permit the charge and discharge cock of every still used by him to be locked by the officer, and to be kept so locked whilst the still is at work. |
| Hours when still not to be used. | 195. Except with the written permission of the proper officer, a rectifier shall not use a still between twelve noon on a Saturday and eight o'clock in the morning of the following Monday. |
| Rectifier to permit officer to sample contents of still. | 196. A rectifier shall allow a proper officer to take a sample of the contents of any still before it has begun to work, or after it has ceased working, and of the contents of any cask, vessel or utensil. |
| Conditions governing receipt of spirits. | 197. (1) A rectifier shall on receipt of any spirits give notice thereof to the proper officer and deliver to him the permit (when required) received with the spirits. (2) A rectifier shall not, unless the proper officer has taken account of the spirits so received, break bulk or draw off any part of the spirits or add water or anything thereto, or in any respect alter them, or trap, open, alter or change any container containing the spirits. |
| Notice of intention to deposit spirits in bonded warehouse. | 198. A rectifier who intends to deposit in a bonded warehouse any spirits rectified or compounded by him shall give to the proper officer at least twelve hours' written notice in an approved form specifying the time at which and the place from which he intends to remove the spirits to the warehouse and giving such particulars of the spirits as the Commissioner may require, and he shall produce the spirits to the officer for examination at the time and place specified in the notice. |
| Rectifier to permit officer to take account of spirits in stock; stock book. | 199. (1) A rectifier shall at any time permit an officer to take an account of all spirits in his stock. (2) If a still is at work when an account of the stock is taken by an officer all spirits produced from the charge of the still shall be kept apart from the remainder of the stock until the account has been completed. (3) When the strength of any spirits forming part of the stock of a rectifier cannot be ascertained without distillation, the rectifier shall, on request by the officer, cause the true quantity and strength of the spirits to be legibly marked on the outside of the |

vessel containing them, and to be kept so marked until the spirits are removed therefrom.

(4) A rectifier shall post up and balance his stock account on each occasion when the officer takes stock.

Power of Commissioner to specify vessels, etc., to ensure excise control and records to be kept.

200. The Commissioner may specify -

(a) the type and description of vessels and other containers which may be used by a rectifier;

(b) such containers as he may consider necessary to ensure proper excise control in respect of operations on a rectifier's premises; and

(c) the records to be kept by a rectifier in respect of his operations,

and the rectifier shall immediately comply with any such specification.

Denaturers

Restrictions on spirits for denaturing.

201. (1) A distiller who is also a denaturer shall not receive spirits for denaturing except from his own distillery or distiller's warehouse and shall not receive any denatured spirits not denatured at his entered denaturing premises.

(2) A denaturer who is not a distiller shall not denature any spirits except spirits distilled in Kenya.

Denaturer ceasing to carry on trade.

202. (1) A denaturer shall not cease to carry on the trade of denaturer until he has first notified the Commissioner in writing.

(2) Where any person notifies the Commissioner of his intention to cease carrying on the trade of denaturer he shall, at his own expense -

(a) dismantle and dispose of any vats or other appliances used for denaturing, or any part thereof, in accordance with the directions of the Commissioner; and

(b) dispose of any spirits and denatured spirits on his premises in accordance with the directions of the Commissioner.

Substances and formula for denaturing.

203. Spirits shall be denatured only by the mixing therewith of the substances (in these regulations referred to as denaturants) set out in the Third Schedule and in accordance with the appropriate formula therein set out.

Denaturants to conform to conditions.

204. The denaturants used in manufacturing denatured spirits shall, unless the Commissioner otherwise permits, conform to the conditions in the Fourth Schedule.

Mixing rooms.

205. (1) A denaturer shall mix spirits with the prescribed denaturants only in an approved mixing room.

(2) Save as permitted by the Commissioner and subject to such conditions as he sees fit to impose, no person shall take into or keep in any mixing room approved for denaturing any substance other than spirits for denaturing, denatured spirits or denaturants, but water intended for use in reducing denatured spirits may be taken in as and when it is required for that purpose.

(3) A mixing room shall contain one or more fixed mixing vats, each of a capacity not

less than two thousand five hundred litres, and shall be ventilated, lighted and equipped with means for taking account of spirits, to the satisfaction of the Commissioner.

- Store rooms. 206. A denaturer shall provide, in convenient proximity to the denaturing plant but separate from the mixing room, an approved store room or compartment to be used solely for the storage of denaturants and marked as being used for that purpose, which he shall not allow to be opened before eight o'clock in the morning nor after five o'clock in the afternoon, and in which he shall provide means to the satisfaction of the Commissioner for taking account of the denaturants.
- Conveying of spirits for denaturing. 207. (1) Spirits for denaturing shall be conveyed to the premises where they are to be denatured under bond in such amount and subject to such conditions as may be prescribed, but no bond shall be required where spirits are removed, in the presence of an officer, from a distillery or distiller's warehouse for denaturing on the distillery premises.
- (2) Spirits intended for denaturing may be removed from a distillery or distiller's warehouse to a denaturer's premises by tank waggon or pipe line, approved by the Commissioner, and means shall in every case be provided to the Commissioner's satisfaction for taking an account of spirits conveyed in the tank waggon or pipe line.
- Interference with spirits conveyed for denaturing. 208. No person shall in any way interfere with or alter any spirits in the casks or drums or other receptacles in which they have been conveyed to the premises where they are to be denatured until the proper officer has taken account of them.
- Placing of spirits in vat or tank. 209. A denaturer shall not place any spirits in a vat or tank which already contains any liquid or matter other than a prescribed denaturant.
- Approval of proper officer to denaturing operation. 210. (1) A denaturer shall, before giving to the proper officer notice to attend to take an account of spirits, obtain the approval of the officer of the denaturants which are to be used in the denaturing of the spirits.
- (2) A denaturer shall allow the proper officer to take samples of the denaturants.
- (3) Before a denaturer denatures any spirits he shall give to the proper officer notice to attend for the purpose of taking an account of the spirits and deliver to him the permit (when required) which accompanied the spirits.
- (4) A denaturer shall not begin to denature the spirits until the officer has taken the account, shall begin to denature immediately thereafter, and shall complete the denaturing with all reasonable speed.
- Placing of denaturants in mixing vat. 211. Before any spirits are placed in the mixing vat a denaturer shall place therein such part of the prescribed quantities of denaturants as the proper officer may require, and shall subsequently add the remainder of the prescribed denaturants and mix them with the spirits in the presence of, and to the satisfaction of, the officer.
- Prohibition on adding substances other than denaturants. 212. A denaturer shall not add to or mix with any spirits or denatured spirits any substance except denaturants in accordance with these Regulations, but water may be added to denatured spirits so long as it does not reduce the strength thereof below sixty degrees over proof.
- Storage of denaturants. 213. Denaturants received into the approved store room or compartment for denaturants shall be placed immediately in the proper vats or other receptacles and the denaturants shall be dealt with and the vats and receptacles shall be secured in such manner as the proper officer may direct.

Accounts of spirits to be kept by denaturer.

214. (1) A denaturer shall keep daily accounts in an approved form of all spirits and denatured spirits received or manufactured by him and of the disposal thereof.

(2) A denaturer shall keep the accounts at his premises and keep them open for inspection by the proper officer at all reasonable times, shall allow the officer to make copies thereof and take extracts therefrom, and shall post up and balance the accounts on each occasion when the officer takes stock and at any other time if the officer so requires.

Stills

Permission to keep or use stills. E. 11.

215. (1) Application for permission under section 103 of the Act to keep or use a still shall be made to the Commissioner in Form E.10, and the Commissioner may grant the application subject to such conditions as he sees fit.

(2) Every person (other than a person who wishes to make or keep stills solely for the purpose of sale) who makes application for permission to keep or use a still, shall furnish to the Commissioner with his application such particulars as the Commissioner may require of -

(a) the still, including drawings thereof;

(b) the premises on which it is to be kept; and

(c) the purpose for which it is to be kept or used.

Disposal of stills.

216. A person permitted to keep or use a still without licence shall not dispose of the still except with the permission and in accordance with the directions of the Commissioner.

Glass flasks and containers.

217. Nothing in regulations 215 and 216 shall apply to glass and containers, flasks and glass condensers which in the opinion of the Commissioner are of a kind intended to be used solely for ordinary laboratory processes.

Ascertainment of the Strength of Spirits

Strength of spirits.

218. (1) The strength of spirits may be ascertained -

(a) by means of Sykes hydrometer and its associated table marked Table 1 (Spirits of the deposited Tables (Series One)); or

(b) by means of Syke's "A" hydrometer or Syke's "B" hydrometer, where the latter is used with its poise attached, and the associated table marked Table 11 (Spirits) of the deposited Tables (Series One); or

(c) by means of Syke's "B" hydrometer, where used without its poise, and by means of the associated table marked Table V (Spirits) of the deposited Tables (Series One); or

(d) by the following means -

(i) the gravity shall be determined, and the strength of the spirits shall be taken to be the percentage of proof spirit corresponding in Table 1 of the deposited Tables (Series Two);

(ii) if for the purpose of determining the gravity of any spirits the spirits are subjected

to dilution with distilled water, Table II, Table III or Table IV of the deposited Tables (Series Two) shall be substituted for Table 1 according as the dilution is to two, three or four times the original volume of the spirits;

(iii) where the gravity of any spirits determined under subparagraph (i) or (ii) falls between any two consecutive numbers appearing in column 1 of any of the Tables, an amount bearing the same proportion to the difference between the two numbers in column II corresponding to the two numbers in column I, as the difference between the gravity so determined and the lesser of the two numbers in column I bears to the difference between the two numbers in column I, shall be deducted from the greater of the two numbers in column II, and the amount so determined shall be deemed to be the strength of the spirits; or

(e) by the following means -

(i) the specific gravity at 80° / 80° Fahrenheit shall be determined, and the strength, of the spirits shall be taken to be the corresponding percentage of proof spirits in the deposited Tables (Series Three);

(ii) where the specific gravity of 80°/80° Fahrenheit of any spirits determined under subparagraph (i) falls between any two consecutive numbers appearing in column I of the last-mentioned tables, the procedure described in subparagraph (d) (iii) shall be followed, except that where in that subparagraph "gravity" is mentioned "specific gravity at 80°/80° Fahrenheit" shall be substituted.

(2) Where the spirits contain any substance other than ethyl alcohol and water the Commissioner may, if he sees fit, either -

(a) remove from the spirits any such substances to the extent which he considers necessary by distillation or such other process as he may direct and may, after the addition of water to replace the quantity so removed, ascertain the strength of the spirits by any means authorized under this head; or

(b) treat the spirits as though they contained ethyl alcohol and water only.

Ascertainment by weight, measure or gauge.

219. (1) The volume of spirits contained in any container may be ascertained for any purpose by weight, measure or gauge as the Commissioner may direct.

(2) Where the Commissioner under paragraph (1) directs ascertainment by weighing, the volume shall be calculated -

(a) by means of Syke's hydrometer and the associated table, marked Table III of the deposited Tables (Series One); or

(b) by means of Syke's "A" hydrometer, or Syke's "B" hydrometer where the latter is used with its poise attached, and the associated table marked Table IV of the deposited Tables (Series One); or

(c) by means of Syke's "B" hydrometer, where used without its poise, and by means of the associated table marked Table VI of the deposited Tables (Series One).

Interpretation and application to denatured spirits and fermented liquor.

220. (1) In regulations 218 and 219 -

"deposited Tables (Series One)" means certain tables signed by the Commissioner and

deposited in his office;

"deposited Tables (Series Two)" means certain tables signed and deposited as aforesaid entitled "Tables showing the relation between the specific gravity of spirits at 60°/60° Fahrenheit and the percentage of alcohol by weight and by volume with the corresponding percentage of proof spirits";

"deposited Tables (Series Three)" means certain tables signed and deposited as aforesaid entitled "Tables showing the relation between the specific gravity of spirits at 80°/80° Fahrenheit, the corresponding percentage of alcohol by weight".

(2) Regulations 218 and 219 shall apply to denatured spirits and to any fermented liquor as they apply to spirits.

PART XII - DUTIES

Payment

Payment of duties.
L.N.91/2002.

221. (1) Duties shall be paid at the custom house or at such other place as the Commissioner may direct.

(2) Credit notes showing that the amount of duty has been paid into a bank to the credit of the customs and cheques which have been certified by a bank or in respect of which a standing bank guarantee has been lodged with the customs may be accepted in payment of duty.

(3) The Commissioner may authorize payment of duty through electronic transfer of funds in such manner as he may prescribe.

Goods Imported for a Temporary Use or Purpose

Goods imported for temporary use.

222. (1) The provisions of section 143 of the Act shall apply to the following -

- (a) commercial travellers' samples;
- (b) goods, including stage properties, imported for local exhibition or entertainment;
- (c) goods imported solely for renovation or repair;
- (d) touring propaganda material not otherwise prohibited;
- (e) any vehicles and goods of a kind described in regulation 224;:
- (f) any vehicles and goods of a kind described in regulation 225;
- (g) such other goods, and subject to such conditions, as the Commissioner may allow:

Provided that the goods covered under this regulation shall not include cinematograph films, other than films of a maximum width of 16 millimetres and a maximum length of 500 metres imported for free exhibition for the sole purpose of promoting travel in

the country therein depicted.

(2) Where any road vehicle or goods are not re-exported within the period of one year, the vehicle or goods shall be liable to duty as from the date of first importation and no reduction in value shall be allowed in respect of depreciation due to any post-importation wear and tear or damage.

(3) For the purpose of this regulation "commercial traveller" means a person who satisfies the proper officer that he is soliciting orders for merchandise on behalf of a business house established outside Kenya.

Commercial travellers' samples and goods imported for temporary use. C. 43. CB. 10. L.N.6/1999

223. (1) Any person who desires to import any goods of a kind described in subparagraphs (a), (b), (c), (d) and (g) of regulation 222 (1) shall make application to the proper officer in Form C.43 and Form C 63 in duplicate and shall state therein -

(a) the full particulars of the goods imported, specifying the nature thereof and any further particulars necessary for the purpose of identification;

(b) the approximate date on which, and the port at which, the goods will be re-exported.

(2) If the goods are to be re-exported at a port other than the port of importation the application shall be made in triplicate.

(3) If the proper officer so requires, invoices or other documentary evidence of value shall be produced and attached to the application and retained by the officer.

(4) The importer shall deposit a sufficient amount to cover the duty on the goods, or shall furnish security thereof in Form CB. 10, at the election of the proper officer.

(5) Before the deposit is refunded or the security cancelled the following conditions shall be observed -

(a) the goods shall be re-exported within a period of twelve months from the date of importation;

(b) the owner shall give due notice to the proper officer at the port of re-exportation of his intention to re-export the goods and shall deliver to the proper officer the duplicate copy of the application issued to him at the port of importation.

Temporary importation of vehicles, etc.

224. (1) If any person who is usually resident outside Kenya and who intends to make only a temporary stay therein imports -

(a) any road vehicle, including trailers, or cycles with or without engines, and their accessories, for his use during the visit; or

(b) any goods intended for his use, convenience or comfort while in Kenya but not intended to go into home use in Kenya; or

(c) any road vehicle, including trailers, designed for the transport of persons for remuneration or for the industrial or commercial transport of goods;

and complies with the conditions contained in paragraph (6), those vehicles and goods

shall be granted temporary free admission subject to re-exportation.

(2) Subject to paragraphs (3) and (4), the vehicle and goods shall be re-exported within a period of twelve months from the date of importation unless the person can establish to the satisfaction of the proper officer that he is prevented from doing so by *force majeure*.

(3) Where a vehicle which has been temporarily admitted cannot be re-exported as the result of a seizure, other than an attachment made at the suit of a private person, the period specified in paragraph (2) shall be suspended for the duration of the seizure.

(4) The re-exportation of a badly damaged vehicle shall not be required in the case of a duly authenticated accident if the vehicle is either subjected to the duty to which it is liable or is abandoned free of all expenses to the customs or destroyed at the expense of the parties concerned, as the proper officer may require.

(5) No reduction in value shall be allowed in respect of any depreciation due to any post importation wear and tear or damage.

(6) Any person importing a vehicle or goods under the provisions of this regulation shall -

(a) at the time and place of importation produce to the proper officer the temporary importation papers (*Carnet de Passage en Douane*, Pass Sheet or other similar importation documents) issued under the guarantee of an authorized association in respect of the vehicle or goods; and

(b) satisfy the proper officer that the vehicle and goods correspond in all respects with the description in the temporary importation papers;

(c) before re-exportation produce the papers and satisfy the proper officer that the vehicle and goods correspond with the description therein;

(d) re-export the vehicle and goods during the validity of the papers; and

(e) in the case of vehicles specified in subparagraph (c) of paragraph (1) the person shall satisfy the Commissioner that -

(i) his principal place of business is outside Kenya;

(ii) the vehicle is registered outside Kenya;

(iii) the vehicle is owned and operated by a person whose principal place of business is outside Kenya;

(iv) the importation is taking place in the course of a journey which has begun and will end outside Kenya; and

(v) the purpose of the journey is to use the vehicle for the transport of persons for remuneration or for the industrial or commercial transport of goods from or to a place outside Kenya.

(7) A guaranteeing association shall be allowed a period of one year as from the notification of the non-discharge of the temporary importation papers, which notification shall be made within five years of the expiry of the validity of the papers, in which to furnish proof of the re-exportation of the vehicle or goods; and if proof is not furnished within the time allowed the guaranteeing association shall forthwith pay the duty payable; and that payment shall not be refundable after a period of one year from the date of the payment.

Procedure when temporary importation papers are not produced. C. 44.

225. (1) If any person who is usually resident outside Kenya and who intends to make only a temporary stay therein imports -

(a) any road vehicle, including trailers, or cycles with or without engines, and their accessories, for use during his visit; or

(b) any goods intended for his use, convenience or comfort while in Kenya but not intended to go into home use in Kenya; or

(c) any road vehicle, including trailers, designed for the transport of persons for remuneration or for the industrial or commercial transport of goods,

and does not produce temporary importation papers (*Cornet de Passage en Douane*, Pass Sheet or other similar importation documents), the vehicle and goods shall be granted temporary free admission subject to compliance with the condition contained in paragraph (2).

(2) Any person importing a vehicle or goods under the provisions of this regulation shall -

(a) at the time and place of importation deposit with the proper officer, or furnish security for the payment of, a sum equal to the duty chargeable on the vehicle and goods;

(b) deliver to the proper officer a claim in Form C.44 in duplicate for temporary exemption;

(c) re-export the vehicle and goods within a period of twelve months from the date of importation; and

(d) in the case of vehicles specified in subparagraph (c) of paragraph

(1) the person shall satisfy the Commissioner that -

(i) his principal place of business is outside Kenya;

(ii) the vehicle is registered outside Kenya;

(iii) the vehicle is owned and operated by a person whose principal place of business is outside Kenya;

(iv) the importation is taking place in the course of a journey which has begun and will end outside Kenya; and

(v) the purpose of the journey is to use the vehicle for the transport of persons for

remuneration or for the industrial or commercial transport of goods from or to a place outside Kenya.

(3) One copy of the form signed and stamped by the proper officer shall be returned to the importer who shall, on re-exportation of the vehicle and goods, declare them on Part II of the form and deliver it to the proper officer at the place of re-exportation.

(4) If the officer is satisfied that the vehicle and goods declared for re-exportation correspond in all particulars with the description in the form, and that they will be re-exported forthwith, the amount deposited shall be repaid to the importer who shall give a receipt to the proper officer.

Vehicles from Uganda, Tanzania, Sudan, Somalia, Ethiopia or any other country with which Kenya has bilateral agreement.

225A. Notwithstanding the provisions of regulations 224 and 225, where -

(a) a person who is resident in Uganda, Tanzania, Sudan, Somalia or Ethiopia and intends to make a temporary stay in Kenya not exceeding three months and wishes to import a road vehicle; or

(b) an owner of a passenger or goods carrying vehicle which is registered outside Kenya, satisfies the proper officer that -

(i) his principal place of business is outside Kenya in a country (herein after called "that country") with which Kenya has a reciprocal bilateral agreement on road transportation;

(ii) the vehicle is registered in that country;

(iii) the vehicle is owned and operated by the person whose principal place of business is in that country; and

(iv) the purpose of the journey is to use the vehicle for the transport of persons or goods for remuneration or otherwise from or to a place in that country to or from Kenya; or

(c) an owner of a vehicle carrying relief personnel, medical equipment or relief supplies wishes to bring in his vehicle, the proper officer may allow importation of such vehicle, without the production of temporary importation papers (*Carnet de Passage en Doune*, Pass Sheet or other similar importation documents) and without making a deposit as required by regulation 225 if that person -

(i) at the time and port or place of importation makes and delivers to the proper officer two copies of a declaration in the Form No. C.44A one of which shall be duly signed and stamped and returned to the importer;

(ii) at the time and port or place of exportation produces the vehicle to the proper officer and delivers to the officer the importer's copy of the declaration in the Form No. C.44A;

(iii) exports the vehicle within fourteen days or such further period not exceeding three months as the proper officer may allow, from the date of importation;

(iv) and in respect of goods, complies with conditions relating to importation by overland routes including provisions contained in regulation 27.

- Restrictions on user of vehicles temporarily imported.
226. No road vehicle imported into Kenya under regulation 224, 225 or 225A shall be -
- (a) lent, sold, pledged, hired, given away, exchanged or, otherwise disposed of without the prior permission of the proper officer; or
- (b) except in the case of importation under regulation 224 (1)
- (c) or 225 (1) (c), 225A (b) used within Kenya for the transport of persons or goods for remuneration.

Payments of, and Security for, Excise Duty on Spirits

- Remittance of excise duty on spirits and declaration. E. 12. E B. 4. E. 13.
- 227 (1) In respect of spirits delivered for home use or rectifying or compounding by a rectifier on payment of duty, the distiller or rectifier shall, together with a remittance for the amount of duty, deliver to the proper officer a declaration in Form E.8 in duplicate.
- (2) In respect of spirits delivered for removal without payment of duty to a rectifier's warehouse, the distiller shall deliver in duplicate to the proper officer, together with such security in Form EBS as the Commissioner may require, a declaration in Form E.8.
- Secured gross accounts.
228. A distiller or rectifier may, if he so desires, pay duty by means of a secured gross payment account.
- Delivery of spirits without payment of duty. EB. 5.E. 14.
229. In respect of spirits delivered without payment of duty in accordance with any written law the distiller shall deliver in duplicate to the proper officer together with such security in Form EBS as the Commissioner may require for the proper delivery of the spirits, a declaration in Form E.8.
- Delivery of spirits for denaturing. EB. 5. E. 15.
230. In respect of spirits delivered for denaturing, the distiller shall deliver in duplicate to the proper officer together with such security in Form EBS as the Commissioner may require, a declaration in Form E.8.

Drawback, Remission, Rebate and Refund of Import Duty, Suspended Duty and Dumping Duty

- Basis of drawback.
- 231 Drawback shall be payable according to the actual quantity of goods re-exported, or shipped for use as stores, or used as prescribed, as the case may be.
- Conditions granting drawback.
232. It shall be a condition for the granting of any drawback that-
- (a) the goods are not prohibited by any law from being re- exported or put on board any aircraft or vessel for use as stores;
- (b) perfect entry of the goods has been made and the relative invoice deposited with the proper officer.
- When drawback is not payable. C. 45. C. 46. CB. 4. CB. 5. L.N.6/1999
233. Drawback shall not be allowed on any goods -
- (a) unless the person claiming drawback enters the goods for re-exportation, or shipment for use as stores, in Form C. 45 and Form C 63 in quadruplicate at the port of re-exportation and submits within twelve months of the date of re-exportation a draw back debenture in Form C. 46 in duplicate;

(b) unless a bond in Form CB. 4 or CB. 5, as the case may be, for

the due re-exportation, or shipment for use as stores, is given, if the proper officer so requires, by the person claiming drawback;

(c) Unless -

(i) the goods are re-exported in their original packages in which they were imported;
or

(ii) the contents were unpacked and repacked in other packages by authority and under supervision of an officer; or

(iii) in the case of machines and machinery, they were found defective before or after installation and upon testing or use for a period not exceeding three months from the date of payment of duty, or such further period as the Commissioner may allow and have subsequently been re-exported or destroyed under supervision of an officer:

Provided that in the case of unexposed cinematograph film, petroleum imported in bulk and leaf tobacco imported and used in the manufacture locally of tobacco, cigars or cigarettes the repacking and payment of drawback may be allowed under such conditions as the Commissioner may impose;

(d) unless the proper officer is satisfied that the goods are identical with the particulars thereof contained in the entries, invoices and other documents relating thereto;

(e) which are damaged or spoilt;

(f) which after importation were used, save as provided for in subparagraph (c), within Kenya;

(g) unless the goods are produced to the proper officer for examination at the approved place of examination prior to re-exportation and also, if required, on board the aircraft or vessel on which they are to be re-exported or used as stores;

(h) unless the goods are conveyed direct and without delay from the place of examination to the aircraft or vessel in which they are to be re-exported or shipped for use as stores, or in case of goods re-exported overland, to the port or re-exportation nearest to the frontier:

Provided that the proper officer may allow any goods to remain in official custody for a reasonable time at the risk and expense of the exporter, in which case drawback shall not be allowed unless the goods are thereafter conveyed direct and without delay to the aircraft or vessel or port or place;

(i) unless the goods are re-exported or shipped for use as stores within twelve months from the date of the payment of duty and the proper officer has certified on the re-export entry that the goods have been re-exported or shipped for use as stores;

(ii) unless the person claiming drawback on the goods entered for re-exportation produces, if required, within the time allowed by the proper officer a certificate in

respect of the landing of the goods from the competent authority at the port or place of discharge.

Remission or refund of duty on abandoned goods. C. 47.

234. Where, in accordance with section 12 of the Act, the owner of goods subject to customs control wishes to abandon them to the customs, he shall apply to the Commissioner in writing, and if the Commissioner allows the abandonment, the owner may apply to the proper officer for remission or refund of duty in Form C.47 in duplicate.

Remission on official aid funded projects. L.N.120/1996. L.N.67/2000

234A. Where under section 138 (2) (g) of the Act, remission is sought in respect of an official aid funded project executed by a contractor other than official aid funding agency, such contractor shall furnish to the Commissioner, a security bond in Form CB 16.

Maintenance, inspection, etc. of remission records

234B. (1) Where remission has been granted in accordance with section 138 (1) of the Act to the persons specified in the Seventh Schedule, the Commissioner shall maintain a record of such remission and shall make inspections from time to time to verify that the goods are used by the person to whom remission has been granted.

(2) Where it is found that the goods are used in a manner inconsistent with the purpose for which the remission was granted, the duty so remitted shall become payable in accordance with the provisions of section 155(1) of the Act.

Remission of duty on goods lost or destroyed by accident.

235. Where, in accordance with section 144 of the Act, any person claims a remission of duty on any goods lost or destroyed by accident, he shall apply therefor in writing to the proper officer and submit proof of the loss or destruction in such form and manner as the proper officer may require.

Rebate of duty on damaged goods. C. 48.

236. Where, in accordance with section 148 of the Act, any person claims a rebate of the duty payable on any imported goods damaged before the goods are delivered out of customs control, he shall submit to the proper officer an application for rebate in Form C. 48 in duplicate, together with such evidence as the proper officer may require that the carrier or insurer of the goods has made an allowance to him in respect of the damage and of the amount of that allowance.

Refund where goods returned to seller. C. 45. C. 46. CB. 4. L.N.66/1999

237. (1) Where, in accordance with section 147 of the Act, the owner of any goods wishes to return them to the seller, he shall notify the proper officer accordingly and submit such evidence as the proper officer may require that the goods are not in accordance with the contract of sale or that the goods were damaged before they were delivered out of customs control.

(2) A refund shall not be allowed on any goods -

(a) unless the person claiming refund enters the goods for re-exportation in Form C. 45 and Form C 63 in quadruplicate at the port of re-exportation and submits within twelve months' of the date of the payment of duty a drawback debenture in Form C. 46 in duplicate;

(b) unless a bond in Form CB. 4 for the due re-exportation is given, if the proper officer so requires, by the person claiming refund;

(c) unless the goods are repacked for re-exportation by authority and under supervision of an officer;

(d) unless the proper officer is satisfied that the 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;

(e) which have been damaged after having been delivered out of customs control;

(f) which after importation were used, save as provided for in subparagraph (c), or exposed for sale, within Kenya;

(g) unless the goods are produced to the proper officer for examination and also, if required, at the approved place of examination prior to re-exportation and on board the aircraft or vessel on which they are to be re-exported;

(h) unless the goods are conveyed direct and without delay from the place of examination to the aircraft or vessel in which they are to be re-exported or, in the case of goods re-exported overland, to the port of re-exportation nearest to the frontier:

Provided that the proper officer may allow any goods to remain in official custody for a reasonable time at the risk and expense of the exporter, in which case refund shall not be allowed unless the goods are thereafter conveyed direct and without delay to the aircraft or vessel or port;

(i) unless the goods are re-exported within twelve months from the date of payment of duty;

(j) unless the proper officer certifies on the re-export entry that that the goods have been re-exported;

(k) unless the person claiming refund on the goods entered for re-exportation produces, if required, within the time allowed by the proper officer, a certificate in respect of the landing of the goods from the competent authority at the port or place of discharge.

Refund of duty on damaged, pillage, or destroyed goods. C. 48.

238. Where, in accordance with section 146 of the Act, any person claims a refund of duty which has been paid on any goods which have been damaged or pillage during the voyage, or damaged or destroyed while subject to customs control, he shall submit to the proper officer an application for refund in Form C. 48 in duplicate, and submit such proof of the damage, pillage or destruction as the proper officer may require.

Refund of duty paid in error or overpaid and of deposit or cancellation of bond given as security. C. 49.

239. (1) Any person claiming a refund of any duties which have been paid in error or shall submit to the proper officer at the place where the duty was paid an application therefor in Form C. 49 in duplicate, together with such evidence of overpayment as the officer shall require.

(2) Save as may be otherwise provided elsewhere in these Regulations, any person claiming a refund of any deposit or requesting cancellation of any bond given by way of security under the provisions of Part XII of the Act, shall submit to the proper officer at the place where the deposit was made or the security given, an application therefor in Form C.36 in duplicate, together with such evidence of compliance with those provisions of the Act that necessitated payment of a deposit or the giving of security as the proper officer may require:

Provided that, notwithstanding anything to the contrary contained in these Regulations, where the Commissioner is satisfied that the non-production of satisfactory proof of compliance in respect of any part of an undertaking given is due

to circumstances beyond the control of the person entering into the undertaking, he may refund to that person so much of any deposit made as he thinks appropriate to that part of the undertaking in respect of which proof has been produced or release that person from the obligations of any bond in so far as it concerns that part.

Refund of duty to registered user. C. 49.

240. (1) An application for refund of duty by a registered user shall be made in duplicate in Form C.49.

(2) No application for a refund of duty shall be accepted by the Commissioner from or on behalf of any person unless-

(a) that person has been registered as a registered user;

(b) the application is presented with all the relevant documents relating to the importation of the goods within twelve months from the date of payment of duty, or within such further period not exceeding three years from the date of that payment as the Commissioner may authorize:

Provided that the Commissioner shall only authorize an extended period during which refund may be claimed before the expiry of the current relative order;

(c) at the time of importation or clearance through customs of goods which he intends to claim a refund of duty he declares on the appropriate customs prescribed entry that—

(i) the goods have either been imported or purchased prior to clearance through the customs by him;

(ii) the goods will be used solely by him for the purpose specified in the relative order; and

(iii) it is his intention to claim a refund of duty in respect of the goods in accordance with the provisions of the Act;

(d) the clearance or entry of the goods on importation or from a bonded warehouse has not been done prior to the effective date of the order.

(3) Any order subsequently made relative to the applicant shall specify a specific rate of refund of duty and the Commissioner shall make the refund on being satisfied that the goods have been dealt with in accordance with the terms of the order and the provisions of these Regulations.

Remission of duty on imports for use in the production of exports duty-free or specified duty exempt goods. L.N.191/94. L.N.132/1993 Cap.482. L.N 122/2001 C.15. C.58. L.N.6/1999 L.N.67/2000 L.N.91/2001, L.N 122/2001

240A. (1) In this regulation -

"Essential Goods Production Support Programme" means the programme administered by the Ministry of Finance for the purpose of remission of duty on goods imported under section 141 (2) (b);

"Export Promotion Programmes Office" means the Office in the Ministry of Finance charged with the responsibility of the administration of this regulation;

"fuel" includes motor spirits (gasolene), automotive diesel and kerosene, but excludes

coal, coke, furnace oil, and petroleum gases;

"indirect exporter" means a manufacturer or producer who imports for use in the production of goods for supply to another manufacturer or producer for use in the production of goods for export;

"indirect export" means the goods supplied by an indirect exporter to a manufacturer or producer for use in the production of exports under this regulation;

"indirect import" means the goods imported by an indirect exporter for the production of indirect exports under this regulation;

"indirect manufacturer" means a manufacturer who imports materials for use in the manufacture of goods which are in turn supplied to another manufacturer or producer for use in the manufacture of goods under the Essential Goods Support Programme;

"manufacture", for the purposes of this regulation, includes any process by which a commodity is finally produced including assembling, packing, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting, joining or other similar activity.

(2) Subject to this regulation, remission of duty may be granted by the Minister in respect of -

(a) goods imported for use in, or to be attached to, goods manufactured or produced in Kenya for subsequent exportation; and

(b) imported goods, other than fuel, lubricants, plant, machinery or equipment, for direct consumption or to be expended in the manufacture or production in Kenya of goods for subsequent exportation;

(c) imported goods, other than fuel, lubricants, plant, machinery or equipment, for direct consumption or to be expended in the manufacture or production in Kenya of goods for supply as shipstores to the national carrier or any airline designated under an air services agreement between the Government and a foreign government.

(e) imported goods, other than fuel, lubricants, plant, machinery or equipment for direct consumption or production in Kenya of goods for supply to a manufacturer under the essential goods production support programme;

(f) imported goods, other than fuel, lubricants, plant, machinery or equipment, by gazzeted industrial sugar users or wheat millers, to be expended in Kenya in the production of goods.

(3) Subject to this regulation, remission of duty may be granted by the Minister in respect of -

(a) goods imported for use in, or to be attached to, goods manufactured or produced in Kenya; and

(b) imported goods, other than fuel, lubricants, plant machinery or equipment, for

direct consumption, or to be expended in the manufacture or production in Kenya of goods:

Provided that the goods produced or manufactured -

- (i) are duty free under the First Schedule to the Act but excluding fuels; or
 - (ii) are goods, including capital equipment and vehicles, supplied to an official aid funded project where the goods, if imported, would have qualified for full remission of duty under section 138 of the Act; or
 - (iii) are goods for official use by the Kenya Armed Forces; or
 - (iv) are goods for supply to the National Carrier or any air line designated under an air services agreement between the Government and foreign government.
 - (v) are shade netting for agricultural or horticultural use by a person the Commissioner is satisfied on the recommendation of the Director of Agriculture, qualifies for exemption under Item 28 of Part B of the Third Schedule to the Act;
 - (vi) *(Deleted by L.N.91/2001)*.
 - (vii) are goods manufactured or produced from industrial sugar.
 - (viii) are goods manufactured for use in the production of goods under the Essential Goods Production Support Programme.
- (4) The remission of duty is restricted to -
- (a) the manufacturer or producer of goods for export referred to in paragraph (2);
 - (b) an indirect exporter approved under paragraph (6) (c); and
 - (c) *(Deleted by L.N.91/2001)*.
 - (d) seventy-five per centum of duty payable in the case of a manufacturer who uses industrial sugar as raw material in the production of goods for domestic use.
 - (e) such manufacturers as the Minister may, by notice in the Gazette, specify for purposes of the importation of industrial sugar or wheat under this Regulation.
- (5) The Export Promotion Programmes Office shall consider for approval all applications for remission under this regulation.
- (6) Subject to paragraph (4), an application for remission of duty under paragraph (2) may be allowed by the Export Promotion Programmes Office in the following cases -
- (a) on receipt of an application on Form C. 56 supported by -
 - (i) a bona fide export order or export contract for specified export goods or a letter of

credit;

(ii) detailed production plans including production processes or formulae, and specifying the types and qualities of goods to be imported; and

(iii) a list of the goods to be imported including description, tariff classification quantity, value and amount of duty to be remitted; or

(iv) Form M issued under the provisions of the Tea Act in respect of Tea sold in Mombasa Tea Auction sales.

(b) where an exporter has an established record of exports of specified goods over a period of at least one year, on receipt of application on Form C.56, for the imports required to produce exports of value up to the value exported on average over a six month period where the application is supported by -

(i) export entries documenting the value of exports of specified goods over the immediately preceding year, or such longer immediately preceding period not exceeding three years;

(ii) detailed production plans including production processes or formulae, and specifying the types and quantities of goods to be imported; and

(iii) a list of the goods or materials to be imported including description, tariff classification, quantity, value and the estimated amount of duty to be remitted; or

(c) on receipt of an application on Form C.56, from an indirect exporter jointly with an application or applications from an exporter or exporters under subparagraph (a) or (b), where the application of the indirect exporter is supported by -

(i) bona fide order or orders from an exporter or exporters applying under subparagraph (a) or (b);

(ii) detailed production plans including production processes or formulae, and specifying the types and quantities of goods to be imported; and

(iii) a list of the goods or materials to be imported as indirect imports including description, tariff classification, quantity, value and the estimated amount of duty to be remitted;

and a copy of the approved application shall be returned to the applicant duly certified by the Export Promotion Programmes Office.

(7) Subject to paragraph (4), an application for remission under paragraph (3) of duty may be allowed by the Export Promotion Programmes Office in the following cases -

(a) on receipt of an application on Form C.60 supported by -

(i) a bona fide order or contract for the purchase of the goods;

(ii) detailed production plans including production processes or formulae, and

specifying the types and quantities of goods to be imported; and

(iii) a list of the goods to be imported including description, tariff classification, quantity, value and the estimated amount of duty to be remitted; or

(b) where a manufacturer has an established record of production and sales of the goods specified under paragraph (3) (a) (i) or (3) (b) (i) over a period of at least one year, on receipt of application on Form C.60 for the imports required to produce the goods of value up to the value of sales on average over a six months period where the application is supported by -

(i) sales invoices documenting the value of sales of specified goods over the immediately preceding year, or such longer immediately preceding period not exceeding three years;

(ii) detailed production plans including production processes or formulae, and specifying the types and quantities of goods to be imported; and

(iii) a list of the goods or materials to be imported including description, tariff classification, quantity, value and the estimated amount of duty to be remitted;

and a copy of the approved application shall be returned to the applicant duly certified by the Export Promotion Programmes Office:

Provided that the value of imported goods for which remission is being requested under this paragraph exceeds two hundred thousand shillings.

(8) Applications under paragraph (6) (b) or (7) (b) can only be made once every six months except where evidence can be provided that exports or sales have or will reasonably be expected to exceed the average export or sale value for a six month period.

(9) The Export Promotion Programmes Office shall maintain a register of applicants for duty remission under this regulation which shall include the name, postal address and location of business premises, and any other information that the Export Promotion Programmes Office may require.

(10) Remission of duty on goods under this regulation is conditional on the applicant undertaking in Form C.56 -

(a) to pay the duty on any imported goods -

(i) that have not been used in the production of approved exports or indirect exports where remission is granted under paragraph (2); or

(ii) that have not been used in the production of approved goods where remission is granted under paragraph (3); or

(iii) that have not been re-exported; or

(iv) that have not been transferred to an approved bonded factory as provided for

under paragraph (24); or

(v) that have not been transferred to the next production period as provided for in paragraph (25);

(b) to complete and submit to the Export Promotion Programmes Office a reconciliation declaration as required under paragraph (22);

(c) to keep and maintain books and records in accordance with paragraph (18); and

(d) to provide security in the form and manner referred to in paragraph (14).

(11) Goods manufactured from goods imported under this regulation shall not be eligible for export compensation under the Local Manufactures (Export Compensation) Act or duty remission under any other written law.

(12) Where a by-product results from a process of manufacture or production utilizing goods subject to duty remission under this regulation, duty shall be payable on such imported goods in the same proportion that the value of the by-product bears to the total value of all goods manufactured or produced from such imported goods unless the by-products are exported.

(13) Where any scrap or waste of commercial value results from a process of manufacture or production utilizing goods subject to duty remission under this regulation, duty shall be payable on the prevailing value of the scrap or waste in accordance with section 127 or 127B, as the case may be, and the First Schedule, unless the scrap or waste is exported, or destroyed under supervision of the proper officer.

(14) Goods imported under this regulation -

(a) shall be entered on Form C.15 and Form C 63 or Form C.20 and Form C 63 with a declaration of "REMISSION UNDER APPROVED MANUFACTURE, Legal Notice Number of" endorsed on each copy in block letters; and

(b) shall have a security bond posted in an amount determined by the Commissioner, but not exceeding the duty that would otherwise be payable, and executed on the Form CB.13.

(15) Goods purchased from an indirect exporter under this regulation -

(a) shall be transferred from the indirect exporter to the approved manufacturer or producer for use in the production of exports using Form C.58; and

(b) shall have a security bond posted by the recipient of the transferred goods in an amount determined by the Commissioner, but not exceeding the duty that would otherwise, be payable on the indirect imports, and executed on the Form CB.13.

(16) The security bond shall be cancelled only -

(a) after the reconciliation declaration has been verified and approved by the Export

Promotion Programmes Office; and

(b) any unused imported goods have been re-exported or transferred to an approved bonded factory; or

(c) the duty has been paid:

Provided that for application of remission approved on or after the 1st of July, 1992, the security bond shall be cancelled within ninety days of receipt by the Export Promotion Programmes Office of a properly completed Form C.57 as required under paragraphs (21) and (22), subject to the payment of all duties declared on the Form C.57, if the Export Promotion Programmes Office has failed to respond in writing to approve or reject such a reconciliation within such a period.

(17) The Export Promotion Programmes Office shall within seven days of the receipt of a satisfactorily completed and supported application as required under paragraph (6) or (7) give approval or advise the applicant of a rejection stating the reasons for rejection.

(18) Every person who has been granted a remission from duty shall keep and maintain at his place of business detailed books and records relating to the purchase, importation, stocks of goods production, packing, sales, shipping and exportation of all goods.

(19) The books and records referred to in paragraph (18) shall be kept for five years from the time of application for remission and shall be made available, upon request, to the proper officer, including an officer of the Export Promotion Programmes Office, for examination and verification at reasonable times.

(20) Separate books and records shall be maintained for stocks of imported goods, indirect imports and indirect exports from those maintained for domestic goods.

(21) A proper officer, including an officer of the Export Promotion Programmes Office or an officer appointed by the Export Promotion Programmes Office, is authorized to examine and verify books and records, inspect the production facilities of any remission applicant and examine any goods or materials within the production facility or any storage place related thereto.

(22) A reconciliation declaration in Form C. 57 in respect of the duty remission granted shall be submitted to the Export Promotion Programmes Office in three copies within a nine month period from the time of approval of the remission application or, for applications approved under paragraph (6) (a) or (7) (a), on completion of the order or contract, whichever is the earlier.

(23) The declaration referred to in paragraph (22) shall be supported by -

(a) certified copies of all import entries and indirect export transfers to which the reconciliation declaration relates;

(b) a document showing -

(i) in the case of exporters approved under paragraph (2), the linkage between the imported goods and indirect exports and the exported goods produced or manufactured

from these imported goods or any waste or scrap of commercial value, any waste or scrap destroyed, or any by-products either exported or sold domestically resulting from the manufacturing or production of the exported goods;

(ii) in the case of indirect exporters approved under paragraph (2), the linkage between the indirect imports and the indirect exports produced or manufactured from the imported goods or a waste or scrap of commercial value, or any waste or scrap destroyed or any by-products either exported or sold domestically resulting from the manufacturing or production of the indirect exports.

(iii) in the case of manufacturers or producers approved under paragraph (3), the linkage between the imported goods and the sales of approved goods produced or manufactured from the imported goods, or any waste or scrap of commercial value, or any waste or scrap destroyed or any by-products either exported or sold domestically resulting from the manufacturing or production of the approved goods; and

(iv) the disposal of any remaining unused imported goods or indirect exports by re-export, transfer to an approved bonded factory, retention for future use in production as provided for under, paragraph (23), or domestic sale subject to duty;

(c) certified copies of all export entry documents or a list of the export entry numbers to which the declaration relates and certified copies of all indirect export transfer documents; and

(d) the invoices for the exported goods, indirect exports and domestically sold goods, as the case may be.

(24) Subject to section 58A of the Act, imported goods for which a remission has been authorized may be sold or transferred to an approved bonded factory.

(25) The remission from duty granted under this regulation may be renewed on the basis of the conditions of the initial authorization after the nine month period referred to in paragraph (22), by submission of a new application under paragraph (6) or (7) where -

(a) fulfilment of an export or domestic sales contract has been delayed, or only partially achieved; or

(b) where production and delivery for export or domestic sale, as the case may be, can be established to be regular and ongoing.

(26) Any person who fails to comply with or contravenes any provision of this regulation shall be guilty of an offence and be liable to a fine not exceeding the higher of one million five hundred thousand shillings or three times the value of the goods involved, or be liable to imprisonment for a term not exceeding three years or to both.

(27) Without prejudice to the provisions of paragraph (26), where any person -

(a) fraudulently contravenes the provisions of this regulation; or

(b) is grossly negligent in complying with the provisions of this regulation; or

(c) repeatedly acts in a manner inconsistent with the intent of this regulation,

the Export Promotion Programmes Office may reject or revoke approval of an application under this regulation.

Remission, Refund and Rebate of Excise Duty on Excisable Goods Other than Spirits

Remission, rebate or refund to privileged persons. E. 16. E. 17.

241. A claim for a remission or rebate of the duty charged or due or a refund of the duty paid on any excisable goods supplied by a licensee to a person entitled to those goods free or at a reduced rate of duty shall be made in duplicate in Form E.9 in the case of excisable goods other than beer or spirits, or in Form E.9 in the case of beer, and shall be accompanied by such documentary evidence of delivery to, or receipt by, the person so entitled as the proper officer may require.

Excisable goods destroyed by fire or unavoidable cause. E. 16. E. 17.

242. (1) A remission of the duty charged or due, or a refund of the duty paid, on any excisable goods which have been destroyed by accidental fire or other unavoidable cause while in any building, room or place which has been entered in accordance with the Act and which is in the factory in which the goods were manufactured, shall not be allowed unless -

(a) while the destruction of the goods is taking place, or immediately thereafter, the licensee notifies the proper officer and within twenty-four hours of the destruction of the goods, or such further period as the proper officer may allow, furnishes him with the particulars in writing of the goods which were destroyed;

(b) the licensee furnishes proof to the satisfaction of the proper officer of the quantity and value of the goods in respect of which a claim is made and, in the case of beer, of the original gravity of the beer, or in the case of blended or diluted beer, the proportions and original gravities of the beers of which the blend or dilution is composed;

(c) the licensee retains for examination by the proper officer any residue or damaged portion of the goods in respect of which a claim is made.

(2) A claim for a remission or refund of excise duty shall be made in duplicate in Form E.9.

Remission of refund on exportation or shipment as stores. C. 29. C. 45. C.29. E.16. E.17 L.N.6/1999

244. (1) A claim for a remission of the duty charged or due or a refund of the duty paid, on any excisable goods (other than beer or spirit) exported, or shipped for use as stores, shall not be allowed unless -

(a) prior to exportation, or shipment for use as stores, the goods are entered in quadruplicate in Form C. 29 and Form C 63, or Form C. 45 and Form C 63 in the case of tobacco, cigars or cigarettes which contain imported leaf tobacco, and the licensee gives notice thereon in writing of his intention to claim a remission or refund of duty on the goods entered in the export entry;

(b) the undermentioned particulars are declared in the export entry -

(i) the place where the goods were manufactured;

(ii) the date of manufacture;

(iii) the amount of the remission or refund of excise duty claimed; and

- (iv) in the case of tobacco, cigars or cigarettes which contain imported leaf tobacco, the weight of the tobacco and the date on which the leaf was entered for home use;
- (c) the goods are produced to the proper officer before exportation or shipment for use as stores;
- (d) the quadruplicate copy of the export entry, duly certified by the proper officer that the goods have been exported, or shipped for use as stores, is attached to the claim for a remission or refund;
- (e) proof of landing at the port or place of destination declared in the export entry is produced to the proper officer if he so requires;
- (f) in respect of the goods on which a claim is made, proof to the satisfaction of the proper officer is produced that the full duty thereon has been charged or become due in the case of a claim for a remission or has been paid in the case of a claim for a refund.
- (2) A claim for a remission of the duty charged or due, or a refund of the duty paid on beer exported, or shipped for use as stores, shall not be allowed unless -
- (a) prior to exportation, or shipment for use as stores, the beer is entered in quadruplicate in Form C. 29 and the licensee gives notice thereon of his intention to claim a remission or refund of duty on the beer entered in the export entry;
- (b) the undermentioned particulars are declared in the export entry -
- (i) the place where the beer was brewed;
- (ii) the date of brewing;
- (iii) the original gravity of the beer or the particulars of blended or diluted beer;
- (iv) the date and place of bottling or packing;
- (v) the amount of the remission or refund of duty claimed;
- (c) the licensee complies with subparagraphs (c), (d), (e) and (f) of paragraph (1).
- (3) A claim for a remission or refund of duty shall be made in duplicate in Form E.9

Refund of excise duty on cigarettes, etc., deposited in bonded warehouse.

244A. (1) A claim for a refund or rebate of the excise duty paid on any cigarettes or manufactured tobacco deposited in a bonded warehouse for exportation or shipment for use as stores for any aircraft or vessel shall not be allowed unless -

- (a) the cigarettes or manufactured tobacco are dispatched directly to the bonded warehouse from the licensee's stock room;
- (b) the cigarettes or manufactured tobacco are produced to the proper officer at the licensee's stock room for examination prior to dispatch and are sealed and secured to

his satisfaction;

(c) the cigarettes or manufactured tobacco are produced to the proper officer at the bonded warehouse for examination and confirmation that the goods have not been tampered with;

(d) the cigarettes or manufactured tobacco are entered for warehousing in Form E.9 in quadruplicate and the licensee gives notice thereon of his intention to claim refund or rebate on the goods so entered;

(e) the quadruplicate copy of the relevant warehousing entry duly certified as to receipt of the cigarettes or manufactured tobacco into the warehouse by the proper officer at the bonded warehouse is produced in support of the claim for refund or rebate which shall be in Form E.9.

(2) Any cigarettes or manufactured tobacco so deposited shall be dealt with as warehoused goods and shall, unless otherwise permitted, be entered either for exportation or for use as stores for aircraft or vessels in accordance with the provisions of the Act.

Refund of duty on excisable goods other than spirits and paid in error. E. 23.

245. A claim for refund of excise duty paid in error on any excisable goods other than spirits shall be made in duplicate in Form E.9.

Remission of duty on spirits, etc., accidentally destroyed

250. (1) A remission of the excise duty charged or due on any spirits or feints which have been destroyed by accidental fire or other unavoidable cause while in any building, room or place which has been entered in accordance with the Act shall not be allowed unless the claimant -

(a) while the destruction of the spirits or feints is taking place, or as soon as can be done thereafter, notifies the proper officer and within twenty-four hours of the destruction of the spirits or feints, or such further period as the proper officer may allow, furnishes him with the particulars in writing of the spirits or feints which were destroyed;

(b) furnishes proof to the satisfaction of the proper officer of the quantity, kind and strength of the spirits or feints in respect of which the claim is made;

(c) retains for examination by the proper officer any remaining evidence of damage or destruction and any residue or damaged portion of the spirits or feints in respect of which the claim is made.

(2) A claim for remission of excise duty in such cases shall be in Form E.9.

Remission of duty when spirits, etc., destroyed under supervision. E. 18.

251. A claim for a remission of the excise duty due or charged on spirits or feints destroyed under the supervision of the proper officer in accordance with section 139 of the Act shall be made in Form E.9.

Remission of duty on spirits shipped as stores. E.10. C.29. EB.6. E.18. L.N.6/1999

252. A claim for a remission of the excise duty charged or due on any spirits exported or shipped for use as stores shall not be allowed unless -

(a) the spirits are dispatched for exportation or shipment as stores from the distillery or

rectifying premises where they were distilled or rectified or compounded;

(b) the spirits are produced to the proper officer at the distillery or rectifying premises for examination prior to dispatch and are sealed and secured in containers to his satisfaction;

(c) the spirits are accompanied by a removal permit in Form E.8, signed by the proper officer at the distillery or rectifying premises, which shall be produced to the proper officer at the port of exportation or shipment as stores;

(d) the spirits are produced together with the removal permit to the proper officer at the port of exportation or shipment as stores for examination;

(e) prior to exportation or shipment as stores the spirits are entered in quadruplicate in Form C. 29 and Form C 63 and the distiller or rectifier gives notice thereon of his intention to claim remission or refund of duty on the spirits entered in the export entry;

(f) the distiller or rectifier declares on the export entry the place where the spirits were distilled or rectified or compounded, the period of distillation or rectification, the kind, quantity and strength of the spirits to be exported and the amount of the remission or refund of excise duty claimed;

(g) if required to do so by the Commissioner, a landing certificate issued by the customs authorities in the country to which the spirits are exported is produced;

(h) in the case of spirits in respect of which a remission of duty is to be claimed, bond security in Form EBS or cash deposit for the due removal and shipment thereof is given;

(i) the quadruplicate of the relevant export entry duly certified as to shipment by the proper officer at the port of exportation or shipment as stores is produced in support of the claim for remission or refund which shall be in Form E.9;

(j) in respect of the spirits in which a claim is made, proof to the satisfaction of the proper officer is produced that the full excise duty thereon has been charged or become due in the case of a remission or has been paid in the case of a claim for a refund.

Refund of duty on spirits deposited in bonded warehouse.

253. (1) A claim for a refund of the excise duty paid on any spirits, rectified or compounded, deposited in a bonded warehouse for exportation or shipment for use as stores for any aircraft or vessel shall not be allowed unless -

(a) the spirits are dispatched to the bonded warehouse from the rectifying premises where they were rectified or compounded;

(b) the spirits are produced to the proper officer at the rectifying premises for examination prior to dispatch and are sealed and secured in containers to his satisfaction;

(c) the spirits are produced to the proper officer at the bonded warehouse for examination;

(d) the spirits are entered for warehousing in Form E.8 in quadruplicate and the

rectifier gives notice thereon of his intention to claim refund of duty on the spirits so entered;

(e) the quadruplicate of the relevant warehousing entry duly certified as to receipt of the spirits into warehouse by the proper officer at the bonded warehouse is produced in support of the claim for refund which shall be in Form E.9;

(f) in respect of the spirits on which a claim is made, proof to the satisfaction of the proper officer is produced that the full excise duty thereon has been paid.

(2) Any spirits , rectified or compounded, so deposited shall be dealt with as warehoused goods and shall, unless otherwise permitted, be entered either for exportation or for use as stores for aircraft or vessels in accordance with the provisions of the Act.

Refund of duty paid on spirits delivered duty free or at a reduced rate. E.21.

254. A claim for a remission of the excise duty charged or due on any spirits supplied to a person entitled to the spirits free of duty or at a reduced rate of duty shall be made in Form E. 9

Refund of duty paid in error on spirits. E. 22.

255. A claim for a of excise duty paid in error on spirits shall be made in duplicate in Form E. 9.

Marking of containers of spirits for export or shipment.

256. Where any spirits are distilled or rectified for exportation or shipment as stores and are subject to a remission of excise duty in accordance with the provisions of the Act, and they are packed in a container which has printed thereon a trade mark or description under which the spirits are offered for sale in Kenya, then that container shall, if the Commissioner so requires, be marked in a manner approved by the Commissioner which will enable the spirits to be distinguished from spirits offered for sale in Kenya.

Inspection of Books, etc.

Inspection of books, etc.

257. Every person from whom any duty has been claimed or by whom any duty has been paid or by whom a claim for remission, rebate or refund of duty charged or paid has been made shall, on demand, allow any officer to inspect and take extracts from any of the books kept by him for the purpose of his business which the officer requires to take extracts from or to inspect for the purpose of satisfying himself as to the correctness of any statement made by the claimant in any declaration submitted to an officer.

PART XIII-CUSTOMS ND EXCISE AGENTS

Application for a licence. L.N.99/1997. C. 50. L.N.6/1999 L.N.64/1999 L.N.63/2003

258. (1) Notices inviting applications for a licence including (renewals) shall be given by the Commissioner by publication in such manner as he may deem fit.

(2) Subject to the Eighth Schedule to these Regulations and to paragraph (4) of this regulation, an application for a licence as a customs and excise agent shall be made in Form C50A and submitted to the proper officer together with non-refundable application fees for each application as follows -

(a) two hundred shillings in respect of applications for a new licence; and

(b) fifty shillings in respect of a renewal of an expiring licence:

Provided that-

(i) where a licence is not renewed for a period of one year, the applicant shall pay the full licence fee for the previous year; and

(ii) where a licence is not renewed for a period of two years or more, the application shall be treated as new.

(2A) All applicants shall meet the conditions set out in the Eighth Schedule;

(3) All applications received by the proper officer under paragraph (2) shall be vetted by a committee constituted by the Commissioner for that purpose:

Provided that any applications by a person whose previous licence was cancelled or suspended or who has been involved in a fraudulent evasion of duty shall not be approved under this regulation.

(4) Subject to paragraph (2), a non-refundable late application fee of ten thousand shillings shall be payable in respect of each application received by the proper officer after the time notified under paragraph(1) has expired.

(5) Where the application is rejected by the vetting committee the applicant may, on payment of a non-refundable appeal fee of fifteen thousand shillings, appeal to the Commissioner for review of the decision of the committee.

(6) The licence shall be in Form C. 50 and shall-

(i) be used as a private licence to agents handling their own goods or those of associated companies;

(ii) be issued as a general licence to agents handling goods for third parties;

(iii) be returned to the Commissioner immediately the licensee ceases to operate his business.

Fee to be paid and
security furnished.
L.N.120/1996.
L.N.6/1999 L.N.
48/2004

259. (1) Where an application under regulation 258 is approved, the applicant shall -

(a) pay the licence fee of forty thousand shillings

(b) furnish a bond in Form CB.11 or a cash deposit of such sum as the Commissioner may require but which shall not be less than two hundred and fifty thousand shillings; and

(c) submit to the proper officer, if he so requires, a tariff of the rates he proposes to charge for services to members of the public.

(d) before clearing any goods produce to a proper officer a letter of appointment by the owner of the goods for purposes of clearance of those goods through the Customs.

(2) Where a Customs agent proposes to handle or clear goods in transit, he shall apply in writing to the Commissioner for a licence and shall, on approval of such application

- (a) pay a licence fee of ten thousand shillings;
- (b) furnish an additional bond in Form CB 11 or a cash deposit of such sum, not being less than one million shillings; and
- (c) submit to the proper officer, if he so requires, a tariff of the rates he proposes to charge for services to members of the public.

Expiry and renewal of licences. L.N.99/1997.

260. Except where otherwise provided in these Regulations, licences shall expire on the thirty-first December of each year but shall be renewable at the discretion of the Commissioner on payment of the licence fees prescribed in paragraphs (1)(a) or (2)(a), as the case may be, of regulation 259.

Penalty for acting without licence.

261. Any person who in any way acts as, or claims to be, a customs and excise agent without having a valid licence shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

Suspension, etc., of licences.

262. (1) The Commissioner may refuse to issue a licence without assigning any reason as may, by notice in writing, suspend, revoke, or refuse to renew, a licence on the grounds stated in the notice.

(2) A copy of the notice shall be delivered to the agent or left at his usual place of abode or business.

(3) The agent may appeal to the Minister against the notice, but if no appeal is lodged within one month of the delivery of the notice, or if on appeal the notice is confirmed by the Minister, the licence shall be void.

PART XIV - SETTLEMENT OF CASES BY THE COMMISSIONER

Request to Commissioner. C.51.

263. The written request by a person that a contravention of the Act or these Regulations be dealt with by the Commissioner under the provisions of Part XVII of the Act shall be in Form C. 51.

PART XV - MISCELLANEOUS

Declaration to be made and particulars to be supplied. C. 52.

264. (1) The importer of any goods whether free or exempt from duty, liable to specific duty or liable to *ad valorem* duty shall, at the time of making entry produce in respect of the goods a declaration in Form C. 52 together with all invoices in his possession relating to the goods, which declaration shall include all goods detailed in the invoices produced.

(2) The importer shall also furnish, in such form as the proper officer may direct, such further particulars as the proper officer may deem necessary for a correct valuation of the goods.

Production of books of account and other documents.

265. The proper officer may require the owner, or any person concerned with the importation, exportation, carriage coastwise or manufacture of any goods to produce at the person's premises or at such other place as the Commissioner may require, all or any books of account or other documents of whatsoever nature relating to the purchase, importation, exportation, carriage coastwise, manufacture or sale of the goods.

| | |
|---|--|
| General bonds. | 266. Where in accordance with section 161 of <u>the Act</u> security may be accepted to cover all transactions, the wording of the form prescribed in the First Schedule may be varied to cover those transactions. |
| Seizure notice. C.53. | 267. The notice of seizure of any aircraft, vessel, vehicle, goods or other thing shall be in Form C. 53. |
| Particulars on forms or other documents. | 268 Where in any customs form or other document a person is required to furnish certain particulars, those particulars shall be printed typed or written thereon indelibly and legibly, and every alteration in the form or document made prior to its acceptance shall be made in such manner as to leave the error as well as the alteration legible; and every such alteration shall be initialed and dated by the person making it. |
| Incorrect form may not be accepted. | 269. An officer may refuse to accept or to act upon any form or other document submitted to him unless the requirements of <u>the Act</u> and these Regulations in relation thereto have been observed. |
| Persons requiring copy of entry. | 270. (1) If the person entering any goods requires a copy of the entry he shall present to the proper officer an additional copy marked "Importer's Copy" or "Exporter's Copy", as the case may be. (2) Each copy of a bill of entry shall, before presentation to the proper officer, be clearly stamped or marked "Original", "Duplicate", "Triplicate" and "Quadruplicate" and, if those additional copies are required by these Regulations, "Quintuplicate and "Sextuplicate", as the case may be. |
| Amendment of forms. | 271. (1) The Minister may, by order published in the Gazette, amend any form in the First Schedule. (2) The Commissioner may specify the form of any other document required or authorized for the purposes of <u>the Act</u> . |
| Notice of sale. | 273. Public notice shall be given of all sales by advertisement in such manner as the Commissioner may see fit, except in the case of perishable goods or live animals, and by notice posted in a conspicuous place at the custom house at the port or place where the sale will be held. |
| Conditions of sale. | 275. (1) Goods shall be sold by the customs or by a licensed auctioneer appointed by the Commissioner. (2) No bid shall necessarily be accepted and should there be any discrepancy between the quantity stated in the sale list and the actual quantity available the customs shall be bound to deliver more than the quantity available for delivery. (3) The purchase money shall be paid on the acceptance of the bid. 276. Deleted by L.N. 120/1996. w.e.f. 1.12.96. |
| Allowance in lieu of food to officers stationed on vessels. | 277. Where, under section 170 of <u>the Act</u> , a master pays an allowance in lieu of providing food to any officer stationed on board a vessel, that allowance shall be in the sum of fifty shillings for each period of twelve hours during which the officer is stationed on board the vessel. |
| Licensed vessels, aircraft and vehicles. L.N.67/2000 | 278. (1) Where any aircraft, vessel or vehicle is required to be and licensed in accordance with section 228 of <u>the Act</u> , no such aircraft, vessel or vehicle shall, except with the written permission of the Commissioner and subject to such conditions as he may impose, be used for the conveyance of any goods subject to customs control, unless the aircraft, vessel or vehicle is licensed in accordance with these Regulations: |

Provided that nothing in this paragraph shall apply to any aircraft, vessel or vehicle owned by the Government when used in the service of the Government.

(2) Application for a licence shall be made in writing to the Commissioner, and the licence shall be in Form C. 55.

(3) When the application for a licence has been approved, the applicant shall -

(a) pay the licence fee of five thousand shillings per annum or fourteen thousand two hundred and fifty shillings triennially per aircraft, vessel or vehicle, or ten thousand shillings per annum or twenty eight thousand five hundred shillings triennially per vessel of up to ten tons register, or one hundred thousand shillings per annum or two hundred and eighty-five thousand shillings triennially per vessel exceeding ten tons register.

(b) furnish security in Form CB. 12 or a cash deposit, if required, in such sum as the Commissioner may require;

(c) submit to the Commissioner, if he so requires, a tariff of the rates to be charged for the conveyance of goods.

(4) All licenses shall be renewable in the discretion of the Commissioner on payment of the licence fee prescribed in paragraph (3) (a).

(5) Each vessel, aircraft or vehicle shall bear the distinguishing registration number allotted to it by the proper officer:

Provided that the number or name under which a vessel, vehicle or aircraft is registered in accordance with the provisions of any other written law may be deemed to be the number allotted to it for the purpose of these Regulations.

(6) No unlicensed vessel or aircraft shall go, or remain, alongside, or approach within fifty metres of, any aircraft or vessel, except with the permission of the proper officer and subject to such conditions as he may impose.

(7) Except with the written permission of the proper officer and subject to such conditions as he may impose, a licensed vessel fitted with hatches shall not be used or employed for the conveyance of any warehoused goods, goods under drawback, dutiable goods intended for transhipment, restricted goods, or such other goods as the Commissioner may determine, unless the hatches can be securely locked and sealed by the customs.

(8) Paragraphs (2) and (3) shall not apply in respect of vehicles licensed under regulation 96.

(9) Any person who contravenes this regulation shall be guilty of an offence.

Penalty.

279. Any person guilty of an offence under these Regulations for which no specific penalty is provided shall be liable to a fine not exceeding twenty thousand shillings.

Fees for services to the public.
L.N. 171/1997

280. The following services may be performed or certificates issued or given by the customs for the public for which the following fees shall be paid -

| | Sh. |
|--|--|
| Certified copy of any document: for each 200 words or part thereof | 100 |
| Landing certificate: for each original bill of entry in which the goods are entered | 100 |
| Certificate of weight for each consignment (plus a weighing fee of cents 50 per package) | 100 |
| Amending inward report (destination, ownership, status) .. | 500 |
| Approving alterations in the marks, numbers or other particulars in any document submitted to the customs, other than an inward manifest: for each alteration | 20 |
| Provided that the Commissioner may remit such fees entirely or on any alteration in excess of one on each document. Any other certificate issued or certification given to a document by the customs | 100 |
| Supplying information relating to trade | Such fee, if any, as the Commissioner may direct. |
| Processing fees on a motor vehicle excluding motor cycles imported free of duty under - | |
| (i) paragraphs (c) and (f) of section 138(2) of <u>the Act</u> | 10,000 |
| (ii) items 7,8,9,10,11,12,15,18,21,26,28,30,34 and 36 of Part A of the Third Schedule to <u>the Act</u> | 10,000 |
| (iii) items 3 and 31 of Part B of the Third Schedule to <u>the Act</u> | 10,000 |

EIGHTH SCHEDULE

CONDITIONS TO BE MET BY APPLICANTS FOR A CUSTOMS AGENTS LICENCE

- (a) Must have a minimum starting capital of Kenya shillings one hundred thousand (KSh. 100,000) evidence of which has to be produced to the satisfaction of the Commissioner.
- (b) Must have an office the physical location of which is to be indicated in the licence application form for customs verification purposes. Any inaccurate information may lead to disqualification or cancellation of a licence. Any change of location must be notified to the Commissioner within thirty (30) days of such change.
- (c) Must be a member of a recognized clearing and forwarding association which should vet the applicant before the applicant is interviewed by customs or renewal of licence.
- (d) Must not at any time have been a director of clearing and forwarding company de-registered due to misconduct.
- (e) Shall be registered with the Income Tax Department and issued with Personal Identification Number (PIN). Must obtain confirmation from the Commissioner of Income Tax that one is up-to-date with Income

Tax returns.

(f) Shall be registered with the VAT Department. Must obtain confirmation with the Commissioner of VAT that one is current with VAT returns.

(g) Must have a bank account particulars of which have to be indicated in the application. Any change of bank account shall be notified to the Commissioner within thirty (30) days of such change.

(h) Shall present a competent Customs expert for interview. The expert shall be an employee of the applicant whose duty shall be to deal with the Customs and shall have attained at least a minimum of "ordinary level" of education and sufficient experience in customs operations as an employee of a clearing and forwarding company or the Customs and Excise Department in the technical division, for a minimum of one year. The alternative acceptable qualification shall be a certificate of competence from a recognized Clearing and Forwarding Institute with relevant experience in Customs operations for at least one year. In either of the two alternatives one has to have two referees. Should the interviewed expert cease to be an employee of the company the replacement shall be allowed to work for a period not exceeding in aggregate 3 months pending the interview. Interviews shall be held on quarterly basis.

(i) Each director, partner or sole proprietor of a clearing and forwarding company shall provide the following, whichever is applicable:

- (i) Memorandum and articles of association.
- (ii) Registration certificate.
- (iii) Personal Identification Number.
- (iv) Identity Card Number/Passport and copy thereof.
- (v) Recent passport size photograph duly certified by a Notary Public or commissioner for oaths.
- (vi) Declaration of interest either directly or indirectly in any other clearing and forwarding business.
- (vii) Declaration of direct or indirect interest in any other clearing and forwarding company.

(j) Any change in personnel under paragraph (h) and paragraph (i) above shall be notified within thirty (30) days for approval by the Commissioner of Customs and Excise.

(k) Renewal of agent's licence shall be subject to demonstration of good performance in the previous year which shall be include:

- (i) Having no usually overdue bonds.
- (ii) Having no overdue queries or serious offences.

THE CUSTOMS AND EXCISE (APPEALS) RULES, 2000

Citation.

1. These rules may be cited as the Customs and Excise (Appeals) Rules, 2000 and shall come into operation on the 1st September, 2000.

Interpretation.

2. In these Rules, unless the context otherwise requires-

“appeal” means an appeal to the Tribunal under this Act ;

“appellant” means a person entering an appeal and includes the advocate or duly authorized agent of such person;

“Chairman” means the chairman of the Tribunal appointed under Section 127E(2);

“memorandum” means a memorandum of appeal presented under rule 4;

“secretary” means the secretary to the Tribunal appointed pursuant to rule 3.

Appointment of Secretary

3. (1) The Commissioner shall appoint a person who may be an officer of the Customs and Excise Department, to be the secretary to the Tribunal.

(2) The secretary shall, in matters relating to appeals to the tribunal and the procedure therefore, comply with any general or special directions lawfully given by the chairman.

(3) The Secretary shall, by notice in the Gazette, notify the address for the presentation or service of documents for the purposes of these Rules and shall, in the same manner, notify any change in that address

Form and time for lodging an appeal

4. an appeal shall be entered by presentation of a memorandum of appeal, together with seven copies thereof, to the secretary within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 127B; but where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within that period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

Memorandum of appeal.

5. A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

Statement of facts by appellant

6. A memorandum shall be accompanied by-

(a) a copy of the decision of the Commissioner disputed by the appellant;

(b) a copy of the notice of appeal; and

(c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, to which shall be annexed a copy of each document or extract from a document upon which the appellant proposes to rely as evidence at the hearing of the appeal.

Service of memorandum

7. Within forty-eight hours after the presentation of a memorandum to the secretary, a copy of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

Statement of facts by the Commissioner

8. (1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7, file with the secretary a statement of facts together with seven copies thereof, and the provisions of rule 6 shall *mutatis mutandis* apply to the statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1), the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to the effect to the Secretary and to the appellant and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

Notice of place of hearing.

9. (1) As soon as may be reasonably practicable after receipt by him of the memorandum, the secretary shall notify the chairman thereof

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the secretary that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the secretary shall cause notice thereof to be served on the appellant and the Commissioner.

(3) The secretary shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and all document received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the appeal.

Procedure at hearing of appeal

10. at the hearing of an appeal, the following procedure shall be observed-

(a) the Commissioner shall be entitled to be present or be represented;

(b) the appellant shall state the grounds of his appeal, and may support it by any relevant evidence, but save with the consent of the Tribunal and upon such term as it may be determined, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies thereof have been annexed to the statement of facts of the appellant;

(c) at the conclusion of the statement and evidence on behalf of the appellant, the Commissioner may make submissions, supported by relevant evidence and paragraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;

(d) the appellant shall be entitled to reply but may not raise a new issue or argument;

(e) the chairman or a member of the Tribunal may at any stage of the hearing ask any question of the appellant or the Commissioner or a witness examined at the hearing, which he considers necessary to the determination of the appeal;

(f) a witness called and examined by either party may be cross examined by the other party to the appeal;

(g) the tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;

(h) before the Tribunal considers its decision, the parties to the appeal shall withdraw from the meeting and the Tribunal shall deliberate on the issue according to law and reach its decision thereon;

(i) the decision of the tribunal shall be determined by a majority fo the members present and voting at the meeting and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;

(j) minutes of the meeting shall be kept and the decision of the tribunal recorded therein.

Tribunal to determine its own procedure in certain matters

11. In matters of procedure not governed by these rules or the Act, the Tribunal may determine its own procedure.

Copies of documents admissible

12. Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence but the tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Fees and Costs

13. No fees shall be payable and a Tribunal shall not make any order as to costs on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay costs to the Commissioner of a sum not exceeding five thousand shillings.

Made on 15th June, 2000

BENERD CHUNGA
Chief Justice

THE CUSTOMS AND EXCISE (EXCISE DUTY STAMPS)

| | |
|-------------------------------|---|
| Citation | 1. These Regulations may be cited as the Customs and Excise (Excise Duty Stamps) Regulations, 2008. |
| Goods Liable to excise stamps | 2. Every package of wines, compounded spirits; and cigarettes manufactured in or imported into Kenya shall have affixed thereon an excise stamp in the manner specified in these regulations. |
| Excise stamps | 3. every excise stamp required to be affixed under regulation 2 shall- (a) be of such size as the Commissioner may prescribe; (b) be serially numbered; (c) bear ultraviolet working; (d) bear the words "Kenya Revenue authority" and the logo thereof; (e) be printed using materials that are water fast scuff resistant; (f) bear any such distinctions as the Commissioner may prescribe to denote the various product classification and origin of goods; (g) be clearly visible when the package is displayed for sale; and (h) be affixed on the package in such a manner as to become damaged when the package is opened. |
| Price of stamps | 4. The Commissioner shall prescribe the price of the excise stamps. |
| Registration | 5. No person shall import any excisable goods on which an excise stamp should be affixed in accordance with these regulations , for sale or for distribution free of charge or for any other purpose in Kenya unless that person is registered with the Commissioner. |
| A person to apply for stamps | 6. (1) Any person intending to manufacture or import any excisable goods on which |

| | |
|--|--|
| | <p>an excise stamp should be affixed in accordance with these regulations, shall make an application or the supply of excise stamps to the Commissioner in the prescribed form at least sixty (60) days prior to the date of manufacture or importation of the goods.</p> <p>(2) Where an application under paragraph (1) is approved, the manufacturer or importer shall pay for stamps as prescribed by the Commissioner.</p> |
| Appointment of a printer | <p>7. (1) The Commissioner shall appoint a suitably qualified person as the printer to print and deliver stamps.</p> <p>(2) A printer appointed under paragraph (1) shall not print any stamps except upon this request of the Commissioner</p> |
| Commissioner may require delivery stamps | <p>8. The Commissioner may, where necessary, require the printer to deliver excise stamps to a manufacturer, importer or supplier of excisable goods.</p> |
| Printer to notify Commissioner | <p>9. The printer shall notify the Commissioner of the number and nature of excise stamps supplied to manufacturers, importers and suppliers of excisable goods within seven days of delivery.</p> |
| Stamps to be fixed in bonded warehouses | <p>10. The stamps may, with prior approval of the Commissioner, be affixed on the packages in a bonded warehouse or a place approved in Kenya.</p> |
| Manufacturer or importer to keep records | <p>11. A manufacturer or importer shall keep a daily register indicating the usage of the various types of stamps and the record shall be produced on demand by the Commissioner.</p> |
| Commissioner may require records | <p>12. The Commissioner may require an importer or a manufacturer to furnish him with any record kept by the importer or the manufacturer regarding excise stamps and such record shall be produced forthwith.</p> |
| Importer and manufacturer to submit statement. | <p>13. Every importer and manufacturer shall submit to the Commissioner a monthly reconciliation statement in such a manner as the Commissioner may prescribe showing, among other things-</p> <p>(a) a summary of the usage of excise stamps issued during the month including the stamps brought forward from the previous month;</p> <p>(b) stamps in stock on the last day of the previous month and brought forward for use during the month;</p> <p>(c) stamps affixed on excisable goods manufactured or imported during the month;</p> <p>(d) stamps spoiled or damaged during the process of affixing and affixing and certified as damaged or spoiled by an authorized officer.</p> |
| Submission of monthly reconciliation. | <p>14. The monthly reconciliation shall be submitted on or before the twentieth day of the month succeeding the month in which the excise duty became due and payable, and where the twentieth day falls on a weekend or a public holiday, then the reconciliation shall be submitted on the last working day prior to the twentieth day.</p> |
| Commissioner to require payment of duty | <p>15. The Commissioner may require an importer or manufacturer to pay duty in respect of stamps in excess of one per centum of the total issued and are not accounted for to his satisfaction.</p> |

| | |
|-----------------------------------|--|
| Unavailability of stamps | 16. In the event of the unavailability of stamps for any reason, the Commissioner may, with the prior approval of the Minister, allow manufacturers and importers upon prior payment of all duties, to sell or import excisable goods without excise stamps. |
| Offences and penalty | <p>17. Any person who-</p> <ul style="list-style-type: none"> (a) imports any excisable goods on which an excise stamp should be affixed without being registered with the Commissioner under these Regulations. (b) Fails to maintain such monthly excise stamp register or record as the Commissioner may prescribe; (c) Fail to affix an excise stamp on the package of excisable goods in such secure manner as the Commissioner may prescribe; (d) Prints over or defaces excise stamp fixed on a package; (e) Knowingly submits a return that is incorrect; (f) Fails to furnish any information that the Commissioner may require; (g) Is in possession of excisable goods on which the excise stamps, have not been affixed and which are not destined for export; (h) Attempts to acquire or acquires an excise stamp without prior authority from the Commissioner; or (i) Prints, makes or in any way creates an excise stamp without the authority of the Commissioner <p>commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a tem not exceeding three years or both.</p> |
| Goods to be forfeited | 18. any excisable goods which are the subject of an offence under these Regulations shall be forfeited and be disposed off in the manner that the Commissioner considers fit. |
| Exemption | 19. Excisable goods manufactured for export or delivered free of duty shall be exempted from the requirement of excise stamps. |
| Commissioner to impose conditions | 20. Notwithstanding any provisions of these regulations, the Commissioner may impose conditions or requirement for the effective accounting of excise stamps and duties in relating to them. |
| Wrapping for packages | <p>21. The material wrapping the package for wholesale purposes shall have printed thereon the words-</p> <ul style="list-style-type: none"> (a) “FOR EXPORT ONLY”, if the excisable goods are for sale in Kenya; or (b) “FOR USE IN KENYA” if the excisable goods are for sale in Kenya; or (c) “DUTY FREE”, if the excisable goods are for sale to Duty-free shops, navy, army, Airforce institute (NAAFI), armed forces Canteen organization (AFCO) or diplomatic shops. <p>Dated the 12th June, 2008</p> <p style="text-align: right;">AMOS KIMUNYA <i>Minister for Finance</i></p> |