



BERMUDA

CUSTOMS DEPARTMENT AMENDMENT ACT 2024

2024 : 42

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WHEREAS it is expedient to amend the Customs Department Act 1952 with respect to the information collected by the Customs Department, to provide for the restrictions that apply to arrangements for cooperation concerning information collected by the Customs Department and to provide for related and connected purposes;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Customs Department Act 1952 (the "principal Act"), may be cited as the Customs Department Amendment Act 2024.

Amends section 1

2 The principal Act is amended in section 1 by inserting in the appropriate alphabetical order the following—

“customs declaration” means any declaration prescribed by the Collector of Customs under section 16 of the Revenue Act 1898;

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“customs information” means information of any kind or in any form that relates to a person or entity and that has been obtained by or has come into the possession of the Department in connection with its functions;

“overseas law enforcement agency” refers to—

- (a) the government law enforcement agency of a state or territory outside Bermuda and includes an official or person employed by or representing a government law enforcement agency;
- (b) an international organization established by the government of states for the purposes international law enforcement.

Amends section 4C

3 The principal Act 1952 is amended in section 4C by repealing and replacing subsection (2) with the following—

“(2) In this section, a “Bermuda Customs Declaration” means a customs declaration prescribed by the Collector of Customs by notice published in the Gazette under section 16 of the Revenue Act 1898 for the purpose of the importation of goods into Bermuda or for the import or export of currency and negotiable instruments, with the exception of the import or export of accompanied personal goods as provided for in heading 98.01 of the First Schedule to the Customs Tariff Act 1970.”.

Inserts sections 7 to 16

4 The principal Act is amended by inserting after section 6A the following—

“Restricted information

7 (1) Except as provided in section 8 or in so far as may be necessary for the due performance of the Department’s functions and duties pursuant to this Act or other statutory provision, any person who is, or is acting as, a member of the Department, or is acting as a servant or an agent of the Department shall preserve and aid in preserving secrecy with regard to—

- (a) any customs information;
 - (b) all matters and information relating to the Department.
- (2) This section does not apply to information which—
- (a) at the time of the disclosure is or has already been made available to the public from other sources; or
 - (b) is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who communicates any such matter or information to a person who is not authorised to receive it or permits any unauthorised person to

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have access to customs information or any information, documents or other records relating to the Department, commits an offence and is liable on summary conviction to a fine of the level six amount as prescribed by section 84A of the Revenue Act 1898.

Permitted disclosure and limitations

8 (1) Customs information may be disclosed by the Collector of Customs as authorised by law, of his own volition or upon request, if the disclosure is for—

- (a) the purpose of enabling or assisting the Department to discharge its powers and duties pursuant to section 2(1), the Revenue Act 1898 or other statutory provision; or
 - (b) the purposes set out in subsection (2).
- (2) Customs information may be disclosed by the Collector of Customs—
- (a) to the Minister in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his statutory functions under this Act or other enactment;
 - (b) to the Minister responsible for national security in any case which the disclosure is for the purposes of enabling or assisting him to discharge his statutory functions under this Act or other enactment;
 - (c) to enable or assist in the discharge of statutory functions under the—
 - (i) Police Act 1974, by a police officer not below the rank of inspector;
 - (ii) Defence Act 1965, by an officer not below the rank of commissioned officer;
 - (d) to the Financial Intelligence Agency, established under section 3 of the Financial Intelligence Agency Act 2007, for the purpose of its functions;
 - (e) for the purpose of enabling or assisting with—
 - (i) the discharge of the statutory functions of a supervisory authority (as defined by section 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008);
 - (ii) requirements relating to international sanctions under the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
 - (f) for the purpose of assisting the Controller of Foreign Exchange with the administration and enforcement of the provisions of the

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Exchange Control Act 1972 and the regulations made under that Act in relation to the movement of persons and currency;

- (g) for the purpose of enabling or assisting with the—
 - (i) enforcement of prohibitions or restrictions on imports into or exports from Bermuda;
 - (ii) control of persons entering or leaving Bermuda;
- (h) to an overseas law enforcement agency for the purposes of assisting with the detection or investigation of crimes which would be considered criminal conduct under Bermuda laws and criminal proceedings that relate to, or involve the functions and duties of the Department as may be contained in an international arrangement for cooperation under section 9, including—
 - (i) the prevention, detection, investigation, prosecution, or punishment of offences;
 - (ii) customs offences of any kind;
 - (iii) the processing of international passengers at the border;
 - (iv) the protection of border security;
 - (v) the enforcement of a law which imposes a pecuniary penalty;
 - (vi) the protection of public health and safety; or
 - (vii) the protection of public revenue;
- (i) to customs authorities and international customs organisations, to assist with the discharge of customs functions internationally as may be contained in an international arrangement for cooperation under section 9.

Arrangements for national and international cooperation

9 (1) The Collector of Customs may, in connection with the exercise of the functions of the Department under section 8 in relation to customs information, enter into an arrangement for cooperation with a party in Bermuda referred to in section 8(2) for the purpose of enabling or assisting with the performance of such party's functions, or with respect to the duties of the Department.

(2) The Collector of Customs may, in connection with the exercise of the functions of the Department, after notifying the Attorney-General and ensuring the necessary safeguards to protect customs information, enter into an international arrangement for cooperation with a customs authority, international customs organization or overseas law enforcement agency in a country or territory outside of Bermuda that exercises functions corresponding to those functions of the Department—

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- (a) for the purposes of and in support of the Department's duties and responsibilities; or
- (b) to assist the customs authority, international customs organization or overseas law enforcement agency with the performance of its functions,

with respect to the prevention, detection or investigation of crimes as provided in section 8(2)(e), (h) or (i).

(3) The Collector of Customs may disclose customs information to a customs authority, international customs organization or overseas law enforcement agency without concluding an international arrangement for cooperation if—

- (a) the information to be disclosed is in accordance with section 15(6) of Personal Information and Protection Act 2016; and
- (b) the Collector of Customs makes and keeps a record of—
 - (i) the information that was disclosed; and
 - (ii) the overseas law enforcement agency or agencies to which it was disclosed; and
 - (iii) the conditions subject to which it was disclosed.

(4) In this section, an “international arrangement for cooperation” includes a memorandum of understanding or a joint operation memorandum that the Collector of Customs may enter into, as provided in subsection (2) and section 8(2), with a customs authority or overseas law enforcement agency from a country or territory outside of Bermuda or an international organization, in the case where the conclusion of such memorandum is provided by or authorized under an agreement or treaty entered into by the United Kingdom of Great Britain and Northern Island and that country, territory or international organization—

- (a) on behalf of Bermuda; or
- (b) that is extended to Bermuda by the United Kingdom.

Restrictions on further disclosure

10 (1) Customs information disclosed by the Collector of Customs pursuant to section 8 or section 9 to any party must not be further disclosed except—

- (a) for a purpose connected with any statutory function of that party for the purposes of which the customs information was disclosed by the Collector of Customs; and
- (b) with the consent of the Collector of Customs.

(2) Consent under subsection (1) may be given—

- (a) in relation to a particular disclosure; or

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- (b) in relation to disclosures made in circumstances specified or described in the consent.

Information received, etc.

- 11 (1) All information—
- (a) received;
 - (b) processed;
 - (c) held; or
 - (d) disclosed,

by the Department, shall be securely protected and disseminated or disclosed or used only in accordance with this Act, applicable laws and any guidance produced in accordance with this Act.

(2) The Department must keep records of customs information for six years from the date when the records were created.

(3) Any member, servant or agent of the Department who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of the level six amount as prescribed by section 84A of the Revenue Act 1898.

Fees

12 The Collector of Customs may charge an administrative fee for the sharing of customs information under this Act which shall be prescribed under the Government Fees Regulations 1976, and be paid to the Collector of Customs.

Personal Information and Protection Act 2016

13 (1) Nothing in this Act authorises a disclosure in contravention of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

(2) The Department shall for the purposes of disclosures made under section 8 and 9 of this Act provide a privacy notice in accordance with section 9 of the Personal Information and Protection Act 2016.

Application of Public Access to Information Act 2010

14 (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) No person who obtains customs information directly or indirectly under sections 7 to 11 for the purposes of, or pursuant to, those sections and receives a request under the Public Access to Information Act 2010 for such information, shall disclose the request or customs information so requested.

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Minister may make regulations

15 (1) The Minister may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

Savings of agreements for national and international cooperation

16 Every memorandum of understanding or arrangement entered into by or on behalf of the Collector of Customs and any other party with respect to national or international cooperation for the purpose of enabling or assisting with the performance of the functions of that party or with respect to the duties of the Department, immediately before the commencement of this section, shall continue to subsist between the Collector of Customs and such other party, subject to the terms of such memorandum or arrangement.”.

Consequential amendments

5 (1) The Revenue Act 1898 is amended as follows—

(a) in section 16 by inserting after subsection (5)—

“(6) Section 6 of the Statutory Instruments Act 1977 shall not apply to notices made under this section.”;

(b) in section 84A(5) by inserting after paragraph (c)—

“(ca) Customs Department Act 1952;”.

(2) The Government Fees Regulations 1976 are amended in Head 18 by deleting "customs declaration" and substituting "Bermuda Customs Declaration".

[Assent Date: 28 December 2024]

[Operative Date: 28 December 2024]