



BERMUDA

AIRPORT (DUTY FREE SALES) ACT 1997

1997 : 24

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SCHEDULED GOODS

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THIRD SCHEDULE

[Preamble and words of enactment omitted]

PART I PRELIMINARY

Short title

1 This Act may be cited as the Airport (Duty Free Sales) Act 1997.

[Section 1 amended by 2011 : 38 s. 2 effective 6 December 2011]

Interpretation

2 In this Act, unless the context requires otherwise—

“Airport” has the meaning assigned to “Bermuda Airport” in section 1 of the Civil Airports Act 1949;

“Airport Duty Free Sales Licence” means a licence granted by the Minister under section 4;

“airport duty free warehouse” means any warehouse in designated space in respect of which the Minister has granted a licence under section 34;

“Airport Duty Free Warehouse Licence” means a licence issued under section 34;

“authorized person” means a person who is employed at the L. F. Wade International Airport and authorized by the Minister—

(a) to receive goods to be delivered to a licensee of a regulated shop or warehouse;

(b) to receive documents which are to be delivered to the Collector of Customs;
or

(d) to receive documents which are to be delivered to a licensee of a regulated shop or warehouse;

“Bermuda Air Terminal” has the meaning assigned to it in regulation 2 of the Bermuda Air Terminal (Fees) Regulations 1952 [*title 23 item 1*];

“Collector” means the Collector of Customs;

“customs officer” means an officer of the Customs Department;

“designated space” means any part of the Bermuda Air Terminal which has been designated by the Minister, after consultation with the Minister responsible for aviation services, from time to time in writing as a place from which a person may, subject to the provisions of this Act, operate a regulated shop or warehouse;

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“duty paid goods” means goods on which customs duty has been paid in accordance with the Customs Tariff Act 1970 [*title 14 item 12*];

“licensee” means a person holding a licence to operate a regulated shop or warehouse, as the case may be;

“Minister” means the Minister of Finance;

“prescribed fee” means a fee prescribed under the Government Fees Regulations 1976 [*title 15 item 18(a)*];

“proper officer” means a customs officer or police officer;

“purchaser” means a person who—

- (a) proposes to purchase or has purchased scheduled goods; and
- (b) has just arrived in Bermuda or is about to leave Bermuda at the time he—
 - (i) proposes to purchase or purchases scheduled goods; or
 - (ii) takes delivery of scheduled goods under Part IV.

“regulated shop” means a shop in designated space in respect of which the Minister has granted a licence under section 4 to sell scheduled goods and includes a shop from which duty paid goods may also be sold;

“scheduled goods” has the meaning assigned to it in section 3.

[Section 2 definitions “authorized persons”, “Bermuda Airport”, “Bermuda Air Terminal”, and “purchaser” amended, and “Collector” inserted by 2011 : 38 s. 3 effective 6 December 2011]

Classes of scheduled goods

3 (1) The classes of goods which may, in accordance with this Act, be received and—

- (a) sold free of duty; or
- (b) stored free of duty,

in regulated shops and airport duty free warehouses are those listed in the First Schedule and the goods shall be known as “scheduled goods”.

(2) The Minister may by order subject to the negative resolution procedure vary the First Schedule.

[Section 3 subsection (1) repealed and substituted by 2011 : 38 s. 4 effective 6 December 2011]

PART II

LICENCE TO SELL DUTY FREE GOODS FROM AIRPORT SHOP

Grant of licence

4 (1) The Minister may, where he considers it desirable so to do—

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- (a) upon receipt of an application in such form as may be specified by the Minister for a licence to operate a regulated shop in designated space; and
- (b) upon payment of the prescribed fee by the applicant,

grant to the applicant a licence to use the space as a regulated shop (in this Act referred to as an "Airport Duty Free Sales Licence").

(2) The Minister shall specify in such a licence granted by him—

- (a) the name of the licensee;
- (b) the situation of the regulated shop and its measurements; and
- (c) any conditions attached to the grant of the licence.

Import and sale of scheduled goods duty free

5 Notwithstanding any statutory provision to the contrary, and subject to section 20, which relates to the sale of goods to a purchaser, where the Minister has granted to a person an Airport Duty Free Sales Licence under section 4 to operate a regulated shop, it shall be lawful for such a person—

- (a) to sell scheduled goods, without payment of duty, from such a regulated shop to a purchaser; and
- (b) to distribute such goods to the purchaser at the time of such purchase for use outside Bermuda.

Bond for licence and increase

6 (1) Subject to subsection (3), the Minister may, if he considers it desirable so to do for the safeguarding of the revenue, require an applicant for a licence to operate a regulated shop to provide a bond in respect of scheduled goods in a regulated shop.

(2) The Minister shall specify in the licence the amount of bond which shall be provided by the applicant.

(3) The Minister may at any time require a licensee to increase the amount of the bond given under this section to an amount sufficient to ensure the payment of any duties payable in respect of any scheduled goods in a regulated shop.

Notice of proposed grant of licence

7 Where the Minister proposes to grant an Airport Duty Free Sales Licence to an applicant, the Minister shall publish in the Gazette a notice specifying—

- (a) the name of the applicant;
- (b) a list of the scheduled goods the applicant proposes to sell from his regulated shop; and
- (c) that a person who objects to the proposed grant of such a licence may object in writing to the Minister within seven days of the publication of the notice.

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Objection to proposed grant of licence

8 (1) A person may object in writing to the Minister, within seven days of publication of a notice under section 7, to the proposed grant of an Airport Duty Free Sales Licence specifying the grounds therefor.

(2) The Minister shall consider any objection in relation to a particular application for a licence when deciding whether to grant a licence to an applicant.

Considerations for grant of licence

9 The Minister shall not grant an Airport Duty Free Sales Licence to an applicant unless he is satisfied that—

- (a) the applicant is a fit and proper person to be entrusted with the sale of scheduled goods free of duty;
- (b) the applicant has, prior to the application, obtained any requisite licence (in particular, a licence required under the Liquor Licence Act 1974 [*title 10 item 6*]) to sell the scheduled goods he proposes to sell duty free;
- (c) the applicant has sufficient financial resources to enable him to lease the designated space in the Airport from which he proposes to operate a regulated shop;
- (d) the applicant has sufficient financial resources to enable him to provide the facilities, equipment and personnel to operate a regulated shop efficiently;
- (e) the applicant has sufficient financial resources to enable him to provide a bond in an amount sufficient to ensure the payment of any duties in respect of any scheduled goods in the shop;
- (f) the establishment of the shop will not impede the movement of persons in the area in which the proposed shop is to be located;
- (g) the Collector of Customs is able to provide customs services with respect to the proposed shop; and
- (h) there are no reasonable objections to the proposed grant of such a licence to the applicant.

[Section 9(c) amended by 2011 : 38 s. 5 effective 6 December 2011]

Conditions of licence and variation of conditions

10 (1) The Minister may specify in an Airport Duty Free Sales Licence such conditions as he considers necessary, including in particular—

- (a) the classes of duty paid goods which may be sold in a regulated shop;
- (b) the circumstances in which any goods may be displayed or sold therein; and

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(c) the content of any form of advertisement used or intended to be used for the purpose of indicating the sale of scheduled goods in a regulated shop.

(2) The Minister may, after consultation with the Collector of Customs, at any time for reasonable cause, add to, or vary, a condition attached to an Airport Duty Free Sales Licence.

Duration of licence and fees

11 (1) An Airport Duty Free Sales Licence shall be granted for a period of one year.

(2) A licensee shall pay to the Minister, for the period beginning on the day on which his licence is granted and ending on 31 March thereafter, the prescribed fee.

(3) Where the Minister grants an Airport Duty Free Sales Licence after 30 September in any year the licensee shall pay half the prescribed fee which is payable for a year.

Renewal of licence

12 The Minister may renew an Airport Duty Free Sales Licence on the expiration of its term provided that no grounds exist for the Minister to revoke the licence.

Revocation of licence

13 Subject to section 14, the Minister may, in writing, at any time, revoke an Airport Duty Free Sales Licence if the Collector of Customs is no longer able to provide customs services with respect to the shop, or if the licensee—

- (a) no longer leases the premises from which he operated the regulated shop;
- (b) applies to the Minister in writing requesting the revocation of the licence;
- (c) fails to comply with this Act or any enactment that prohibits, controls or regulates the import or export of goods, or that relates to customs tariffs;
- (d) is bankrupt;
- (e) has, in the course of his operation of the shop acted dishonestly in his business dealings with customers, suppliers, customs officers or other servants of Her Majesty.

Notice of intention to vary or revoke a licence

14 (1) The Minister shall, before he varies any conditions in a licence or revokes a licence—

- (a) give the licensee notice in writing of the ground or grounds on which he intends so to do;
- (b) afford the licensee an opportunity to object in writing within the period of thirty days after receipt of the notice; and
- (c) take any such objection into consideration,

and, if the Minister, decides to vary a condition in a licence or revoke the licence, he shall cause the instrument revoking the licence or varying a condition in the licence to be served on the licensee.

(2) Subject to section 15, the variation or revocation of an Airport Duty Free Sales Licence takes effect on the expiration of twenty-one days beginning on the date of service on the licensee of the instrument varying or revoking the licence.

Appeals

15 (1) Subject to subsection (2), an applicant or licensee, as the case may be, who is aggrieved by a decision of the Minister to—

- (a) refuse to grant an Airport Duty Free Sales Licence;
- (b) attach or vary any conditions attached to such a licence;
- (c) revoke such a licence,

may appeal to the Supreme Court within twenty-one days or such longer period as the Court may allow after receipt of notification of such decision, so specifying the grounds therefor.

(2) An applicant for a licence or a licensee, as the case may be, may make an appeal under subsection (1) on either or both of the following grounds—

- (a) that on the facts before him, the Minister's decision was unreasonable and cannot be supported;
- (b) the Minister erred on a question of law which was material to the decision,

but on no other ground.

(3) If an appeal is allowed by the Court, the Court shall remit the matter to the Minister with a direction, as the case may be—

- (a) to grant the licence which the Minister has refused to grant;
- (b) to remove any one or more conditions attached to the licence or grant the licence subject to such conditions as the Court may direct; or
- (c) not to revoke the licence,

and the Minister shall comply with any such direction.

(4) The bringing of an appeal under subsection (1) suspends the revocation or variation appealed against pending the determination of abandonment of the appeal.

(5) Section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

PART III

STANDARDS FOR OPERATION OF AIRPORT SHOP

Permitted hours of operation

16 Notwithstanding any restriction in any enactment regarding the sale of any class of scheduled goods, the licensee may, if he deems fit, sell scheduled goods from his regulated shop every day, twenty-four hours a day, and this shall include public holidays.

Display of notices

17 Every licensee shall, at the regulated shop in respect of which his licence is granted, display his Airport Duty Free Sales Licence and notices indicating—

- (a) that the scheduled goods sold in the shop—
 - (i) are for immediate export; and
 - (ii) must be reported and returned to a customs officer if they are not exported from Bermuda;
- (b) the restrictions in respect of the minimum age, if any, for the purchase of classes of scheduled goods;
- (c) such other matters as may be specified in writing from time to time by the Minister.

Storage and marking of goods

18 (1) Every licensee shall, subject to any directions given by the Collector of Customs, ensure that the goods received and displayed in his regulated shop are marked in such manner that—

- (a) the goods may be readily identified and checked against his records of inventory and the relevant customs documents; and
- (b) scheduled goods may be readily distinguished from other goods.

(2) The licensee shall ensure that his shop may be locked and sealed by a proper officer where the Collector of Customs requests that the shop be locked and sealed—

- (a) for the purpose of enabling an officer to check the goods against the licensee's records of inventory;
- (b) where the licensee's licence expires or is revoked; or
- (c) for the purpose of safekeeping the goods displayed for sale in his shop.

Power of Collector to allow sorting or repacking of goods

19 The Collector of Customs may, under such directions as he sees fit, allow the licensee or other authorized person having control over the scheduled goods to be displayed in a regulated shop to sort, separate and pack and repack any such goods.

Sale of scheduled goods to purchaser

20 (1) Subject to subsections (2) and (3), a licensee may only sell scheduled goods in his regulated shop to a purchaser who presents a valid boarding pass for a flight which is about to leave Bermuda.

(2) Where the licensee is satisfied that a purchaser of scheduled goods is a member of the crew of an airline assigned to a flight which is about to depart from Bermuda or such other person who has not, for a valid reason, been assigned a boarding pass in respect of a flight, the licensee may accept the form of identification specified in writing by the Minister, instead of a valid boarding pass.

(3) Scheduled goods sold to a purchaser under this section shall be distributed to the purchaser in sealed packages in such manner as the Collector of Customs may direct.

Disposal of goods where departing flight is delayed

21 (1) Where a departing flight is delayed and a departing purchaser re-enters Bermuda without exporting scheduled goods, a customs officer or other authorized agent shall—

- (a) collect such goods from the passenger and store them in a secure place reserved for that purpose by the Collector of Customs, until the departure of the flight; or
- (b) collect such goods from the passenger and deliver them to the licensee of the regulated shop from which they were purchased by the purchaser; and
- (c) give the purchaser a receipt for the goods so secured.

(2) A customs officer or licensee, as the case may be, shall, upon presentation to him by a purchaser whose goods have been secured in accordance with subsection (1), and who is about to leave Bermuda, return the goods to the purchaser, and enter such distribution in the relevant records.

[Section 21 amended by 2011 : 38 s. 6 effective 6 December 2011]

Refund for scheduled goods if scheduled goods are not exported

22 (1) Where any scheduled goods sold to a purchaser in a regulated shop are not exported by him, the licensee shall—

- (a) upon satisfactory proof of such sale being furnished to him by the purchaser; and
- (b) upon the return of the scheduled goods for which a refund is being sought,

refund to the purchaser the price of the goods so returned.

(2) Where a proper officer, for security reasons, determines that a purchaser seeking such a refund may not re-enter the regulated shop where he purchased the scheduled goods to seek a refund, the officer shall, upon satisfactory proof of the sale of the goods being furnished to him—

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- (a) receive and secure the goods on behalf of the licensee of the regulated shop, in accordance with the directions of the Collector of Customs, pending the return of the goods to the licensee; and
- (b) give the purchaser a receipt for the returned goods.

Officer's access to goods

23 A licensee shall, where a proper officer so requests—

- (a) afford the officer free access to his regulated shop; and
- (b) open any package or container of goods therein or remove any covering therefrom.

Records of sales and distribution

24 (1) A licensee shall—

- (a) keep all records that relate to scheduled goods received into his shop; and
- (b) furnish such records to the Minister from time to time as the Minister may require.

(2) The records which the licensee is required to keep under subsection (1) shall contain information concerning—

- (a) the sale of the goods from the regulated shop;
- (b) the price that a person paid for the goods;
- (c) the control of inventory in the shop;
- (d) the composition of the inventory in the shop;
- (e) the payment of fees to the Minister or charges to any other authorized person; and
- (f) any other matter specified by the Minister from time to time.

(3) The records required to be kept under subsection (1) shall be kept for the period of 5 years after the sale or disposal of the goods.

Transfer of ownership of goods to new licensee

25 (1) Where a person's Airport Duty Free Sales Licence is about to expire or be revoked and a new licensee is granted a licence to operate the regulated shop on the same premises as the premises of the licensee, the ownership of the scheduled goods may, with the prior written approval of the Collector of Customs, be transferred to the new licensee.

(2) The licensee shall, when he requests the written approval of the Collector of Customs under subsection (1)—

- (a) produce to the Collector of Customs records that contain information sufficient to identify the scheduled goods he intends to transfer to a new licensee; and

- (b) pay any applicable duties for such goods in full.

Provision of information by licensee

26 (1) Every licensee shall provide to the Minister responsible for aviation services a summary of monthly sales and such other information as he may request not later than 15 days after the last day of the month in which the sales described on the form were made.

(2) The licensee shall make an annual report to the Minister responsible for aviation services in respect of his regulated shop, not later than 21 days after the end of the year for which the report is made.

Liability of licensee until goods are exported

27 A licensee in respect of his regulated shop is liable to pay all duties under this Act or any other enactment relating to customs duties on scheduled goods that have been received in his shop unless he proves—

- (a) that the goods are scheduled goods and are still in his shop or an airport duty free warehouse;
- (b) have been destroyed in his shop or an airport duty free warehouse;
- (c) have been lawfully removed from his shop or an airport duty free warehouse by sale or by a proper officer.

PART IV

DISTRIBUTION OF PRE-PURCHASED DUTY FREE GOODS FROM AIRPORT SHOP

Transfer to and storage of pre-purchased scheduled goods

28 (1) Where a licensee requests such approval in writing, the Collector of Customs may approve the distribution from the licensee's regulated shop of scheduled goods which have been purchased from a shop owned by the licensee and located outside the Bermuda Airport.

(2) Subject to the directions of the Collector of Customs, the licensee may receive and store scheduled goods in an area of his regulated shop specified by the Collector of Customs pending distribution to a purchaser.

Distribution of pre-purchased scheduled goods

29 (1) The licensee shall only distribute scheduled goods to a purchaser upon the production by the purchaser of his sales slip and valid boarding pass; and section 20 applies to the distribution of scheduled goods to a purchaser without a valid boarding pass.

(2) Where any scheduled goods which have been received in a regulated shop for distribution therefrom are not collected by the purchaser, such goods shall be warehoused in an airport duty free warehouse as soon as is practicable that same day, and such warehousing shall be recorded in the manner required by the Collector of Customs.

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Delayed flights or refunds

30 Sections 21 and 22, which relate to delayed flights and refunds respectively, apply with the necessary modifications, to the distribution of scheduled goods under this Part.

Conditions for approval

31 The Collector of Customs may give his written approval under section 28 subject to any conditions specified therein in respect of—

- (a) persons who are authorized to undertake such distribution;
- (b) the area of the regulated shop designated for such distribution; and
- (c) the records to be kept in respect of such distribution.

Identification of packages

32 (1) Scheduled goods to be distributed under this Part shall be properly packaged in bonded packages.

(2) Each package and its contents shall be clearly identified in such manner as the Collector of Customs may from time to time direct.

Tampering with packages not permitted

33 Where scheduled goods are in a regulated shop pending their distribution under this Part, the licensee shall not allow any person to open or otherwise tamper with any bonded package of scheduled goods—

- (a) while it is stored in a regulated shop; and
- (b) while it is being distributed therefrom to a purchaser,

unless authorized in writing by a customs officer so to do.

PART V

OPERATION OF AIRPORT WAREHOUSE

Grant of licence

34 (1) The Minister may, where he considers it desirable so to do—

- (a) upon receipt of an application in the prescribed form for a licence to operate a duty free warehouse in designated space; and
- (b) upon payment by the applicant of the prescribed fee,

after consultation with the Collector of Customs, grant to the applicant a licence to use the space as an airport duty free warehouse (in this Act referred to as an "Airport Duty Free Warehouse Licence").

(2) A licence granted under subsection (1) shall specify—

- (a) the name of the licensee;

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- (b) the situation of the warehouse and its measurements; and
- (c) any conditions attached to the licence.

Prohibition of storage of duty paid goods in airport duty free warehouse

35 Duty paid goods shall not be stored in an airport duty free warehouse.

[Section 35 repealed and substituted by 2011 : 38 s. 7 effective 6 December 2011]

Bond for licence and increase

36 (1) In respect of scheduled goods stored in a warehouse, the Minister shall, for the purposes of safeguarding the revenue, require an applicant for a licence to operate an airport duty free warehouse to provide a bond with two sureties to be approved by the Collector of Customs, in an amount specified by the Minister, he and they being jointly and severally bound thereby.

(2) Section 6(3), which empowers the Minister to increase a bond in respect of an Airport Duty Free Sales Licence, applies to the grant of an Airport Duty Free Warehouse Licence as it applies to the grant of an Airport Duty Free Sales Licence.

Notice of proposed grant of licence and right to object

37 Sections 7 and 8, which require notice to be given of the proposed grant of an Airport Duty Free Sales Licence, apply with the necessary modifications to the proposed grant of an Airport Duty Free Warehouse Licence as they apply to the proposed grant of an Airport Duty Free Sales Licence.

Considerations for grant of licence

38 The Minister shall not grant an Airport Duty Free Warehouse Licence to an applicant unless he is satisfied that—

- (a) the applicant is a fit and proper person to be entrusted with the storage of scheduled goods without the payment of duty;
- (b) the applicant has sufficient financial resources to enable him to lease the designated space from which he proposes to operate an airport duty free warehouse;
- (c) the applicant has sufficient financial resources to enable him to provide a bond in an amount sufficient to ensure the payment of any duties in respect of any scheduled goods in the warehouse;
- (d) the establishment of the warehouse will not impede the movement of persons in the area in which the proposed warehouse is located;
- (e) the Collector of Customs is able to provide customs services with respect to the proposed warehouse; and
- (f) there are no reasonable objections to the grant of an Airport Duty Free Warehouse Licence to the applicant.

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Conditions of licence

39 The Minister may, for the purpose of safeguarding the revenue, impose the following conditions in relation to an Airport Duty Free Warehouse Licence—

- (a) that the licensee shall provide a bond for the scheduled goods;
- (b) that no scheduled goods be removed from the warehouse except with the authority of a proper officer;
- (c) that scheduled goods be stored only in the part of the warehouse and the manner in which the Collector of Customs directs;
- (d) *[repealed by 2011 : 38 s. 8]*
- (e) that no alteration be made to the warehouse or the means of access or approaches thereto, except such alteration as the Collector of Customs may expressly approve in writing;
- (f) that the licensee sells scheduled goods from the warehouse, to arriving passengers only;
- (g) that scheduled goods from the warehouse sold to arriving purchasers, shall be given to the purchasers in sealed packages in such manner as the Collector may direct.

[Section 39 amended by 2011 : 38 s. 8 effective 6 December 2011]

Duration of licence and fees

40 (1) An Airport Duty Free Warehouse Licence shall be granted for a period of one year.

(2) A licensee shall pay to the Minister, for the period beginning on the day on which his licence is granted and ending on 31 March thereafter, the prescribed fee.

(3) Where the Minister grants an Airport Duty Free Warehouse Licence after 30 September in any year the licensee shall pay half the prescribed fee which is payable for a year.

Variation of conditions, or renewal or revocation of licence

41 Sections 12 to 14, which relate to the variation of conditions, or renewal or revocation of an Airport Duty Free Sales Licence, apply with the necessary modifications to an Airport Duty Free Warehouse Licence as they apply to an Airport Duty Free Sales Licence.

Display of notices in airport duty free warehouses

41A Every licensee shall, at the regulated shop in respect of which his licence is granted, display his Airport Duty Free Warehouse Licence and notices indicating—

- (a) the restrictions in respect of the minimum age, if any, for the purchase of classes of scheduled goods; and

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- (b) such other matters as may be specified in writing from time to time by the Minister.

[Section 41A inserted by 2011 : 38 s. 9 effective 6 December 2011]

Appeals

42 Section 15, which relates to appeals in respect of an Airport Duty Free Sales Licence, applies, with the necessary modifications, to an Airport Duty Free Warehouse Licence as it applies to an Airport Duty Free Sales Licence.

Records of goods in warehouse

- 43 (1) A licensee shall—
- (a) keep all records that relate to the scheduled goods received into and removed from his airport duty free warehouse; and
 - (b) furnish such records to the Minister from time to time as the Minister may require.
- (2) The records required by subsection (1) shall contain information—
- (a) describing the goods;
 - (b) accounting for the goods when they are removed from the warehouse;
 - (c) concerning inventory;
 - (d) concerning the transfer of the goods to another bonded warehouse or to the regulated shop;
 - (e) concerning the unpacking, packing, manipulation or alteration of the goods; and
 - (f) *[repealed by 2011 : 38 s. 10]*
 - (g) any other matter which the Minister shall specify from time to time.
- (3) The records required to be kept under subsection (1) shall be kept for the period of 5 years after the sale or disposal of the goods.
- (4) For the avoidance of doubt, it is hereby declared that requirements in respect of record keeping under this Act are supplementary to and in addition to any such requirements under the Revenue Act 1898 *[title 14 item 10]*.

[Section 43 subsection (2) amended by 2011 : 38 s. 10 effective 6 December 2011]

Restriction of entry to warehouse

- 44 (1) Subject to subsection (2), a licensee shall not admit any person into his airport duty free warehouse except a proper officer, an authorised person, or a person who has just arrived in Bermuda by air.

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(2) A person who has just arrived in Bermuda by air, shall be admitted into an airport duty free warehouse only at times, a proper officer, upon notification to the licensee, permits.

[Section 44 repealed and substituted by 2011 : 38 s. 11 effective 6 December 2011]

Application and modification of Revenue Act 1898

45 Subject to the modifications specified in the Second Schedule, the provisions of the Revenue Act 1898 [*title 14 item 10*] specified in that Schedule shall apply for the purposes of this Act—

- (a) as if an airport duty free warehouse were a bonded warehouse;
- (b) as if an Airport Duty Free Warehouse Licence were a licence issued under section 50 of that Act; and
- (c) as if references to uncustomed goods were references to scheduled goods.

PART VI

MISCELLANEOUS

Regulations

46 (1) The Minister may make such regulations as may appear to him necessary or desirable for the purposes of this Act.

(2) The negative resolution procedure shall apply to regulations made under this section.

Offences and penalties

47 (1) A licensee who fails, without reasonable excuse, the proof of which shall be upon him, to comply with any requirement or direction or prohibition imposed on him by or under a provision to which this section applies commits an offence and shall be liable—

- (a) on summary conviction, to a fine of the level 2 amount; or
- (b) where such summary conviction is subsequent to a previous conviction for a failure to comply with the substance of that requirement, direction or prohibition, to a fine of the level 4 amount.

(2) The provisions to which subsection (1) applies are those of sections 10, 18 to 27, 29, 32, 33, 35, 43 and 44.

(2A) A licensee who fails to comply with any condition imposed in a licence under section 39, shall pay a penalty of the level 4 amount.

(3) A licensee who, in any information required to be furnished under any provision of this Act—

- (a) makes, or authorizes; or
- (b) allows to be made or authorized,

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any statement or entry which he knows or has reasonable cause to believe to be false or misleading in a material particular, commits an offence and shall be liable—

(c) on summary conviction to imprisonment for 3 months or a fine of the level 4 amount or both such imprisonment and fine; or

(d) on conviction on indictment to imprisonment for 2 years or a fine of the level 6 amount or both such imprisonment and fine.

(4) It shall be a defence for a licensee charged with an offence under subsection (3) to prove—

(a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy;

(b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

(5) Without prejudice to subsection (3), the court, upon the conviction of a person under that subsection may, in addition to any punishment imposed in connection with that conviction, order that the scheduled goods upon which duty has not been paid, and in respect of which the offence was committed, shall be forfeited.

[Section 47 subsections (1) and (3) penalty on standard scale substituted for amount in § by 2004:6 s.18 & Sch 2 effective 26 March 2004; Section 47 subsection (2A) inserted by 2011 : 38 s. 12 effective 6 December 2011]

Offences by corporations

48 Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Consequential amendment

49 *[omitted]*

Amendment of Liquor Licence Act 1974

50 *[omitted]*

Savings and transitional

51 (1) Nothing in this Act shall be construed so as to derogate from or abridge any provision—

(a) of the Revenue Act 1898 *[title 14 item 10]*;

(b) of the Customs Tariff Act 1970 *[title 14 item 12]*;

(c) of the Customs Department Act 1952 *[title 14 item 11]*,

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which relates to the operation of bonded warehouses, except to the extent that the effect of any such provision is expressly excluded or modified by this Act.

(2) For the avoidance of doubt, the Revenue Act 1898 [*title 14 item 10*] and the Customs Tariff Act 1970 [*title 14 item 12*] shall apply in relation to—

- (a) any duties payable upon the import of scheduled goods into Bermuda by a licensee or applicant; and
- (b) duty paid goods stored or sold respectively in an airport duty free warehouse or regulated shop by a licensee or an applicant.

(3) Nothing in this Act shall affect any duty, tax, charge or fee payable by a licensee in respect of any scheduled goods which a licensee or applicant has imported into Bermuda in bond before the coming into operation of this Act.

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FIRST SCHEDULE

(section 3)

SCHEDULED GOODS

Cigarettes
Cigars
Snuff
Spirits
Tobacco
Wines

SECOND SCHEDULE

(section 45)

PART 1
APPLICATION OF PROVISIONS OF REVENUE ACT 1898

1 The following are the provisions of the Revenue Act 1898 (“the Act”) which apply, with the modifications as specified below, for the purposes of this Act, in accordance with section 45.

2 Sections 14, 16, 24 and 28 of the Act which relate to—

- (a) the entry of goods;
- (b) ascertainment of the value of goods for the purposes of duty; and
- (c) quarterly tables of imports and exports,

shall apply.

3 (1) The following provisions of Part IV of the Act, which relate to the licensing of bonded warehouses and the conditions in respect of the warehousing of goods, shall apply as follows.

(2) Section 50 shall not apply.

(3) Section 51 shall apply where an Airport Duty Free Warehouse Licence is revoked under this Act.

(4) Sections 52, 53, 54(1), 55 and 56 shall apply.

(5) Section 57 shall apply with the omission, in subsection (4), of the words “and when any such malt liquor” to the end.

(6) Sections 59 to 61 shall apply.

(7) Section 64 shall not apply.

(8) Section 65 shall apply—

(a) with the substitution for the words “for exportation” to the end of subsection (1) of the words “for the sale or distribution from a regulated shop or an airport duty free warehouse.”; and

(b) with the omission of the words “either for home consumption or for exportation” from subsection (2).

(9) Sections 66 to 70 shall apply.

(10) Section 71 shall apply with the following substituted for the words from the beginning to “such other port”—

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“Any scheduled goods warehoused in Bermuda may be removed for re-warehousing to an airport duty free warehouse”;

and, accordingly, sections 72 and 73 shall apply in relation to the re-warehousing of scheduled goods with the necessary consequential modifications.

4 Except where a specific penalty is imposed by this Act, those provisions of the Act which impose forfeitures or penalties in respect of the unlawful removal of goods from a bonded warehouse or the unlawful disposal of goods so removed shall apply in respect of the removal of scheduled goods in bond or the disposal of such goods from an airport duty free warehouse.

5 The following provisions of the Act shall apply—

- (a) sections 96 to 98A, 99A to 103 and the First Schedule, which relate to search and seizure;
- (b) sections 104 to 108 of the Act, which relate to claims; and
- (c) section 109, which relates to writs of assistance.

PART 2

APPLICATION OF PROVISIONS OF THE CUSTOMS TARIFF ACT 1970

1 Heading 98.01 in the First Schedule to the Customs Tariff Act 1970 shall apply to scheduled goods removed from an airport duty free warehouse by an arriving purchaser, as if such goods were accompanied personal goods imported by such person.

2 Section 7(1)(a) of the Customs Tariff Act 1970 shall apply to both the licensee and the purchaser.

[Second Schedule para 2 substituted by 2004:6 s.19 & Sch 3 effective 26 March 2004; Second Schedule amended and Part 2 inserted by 2011 : 38 s. 13 effective 6 December 2011; Second Schedule Part 2 amended by 2016 : 15 s. 15 effective 1 April 2016]

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THIRD SCHEDULE

(section 49)

[omitted]

[Assent Date: 14 July 1997]

[Operative Date: 14 July 1997]

[Amended by:

2004 : 6

2011 : 38

2016 : 15]