

JAMAICA

No. 11 - 2014

I assent,

[L.S.]

(sgd.) P. L. Allen
Governor-General.

30th day of September, 2014

AN ACT to Amend the Customs Act.

[1st day of October, 2014]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Customs (Amendment) Act, 2014, and shall be read and construed as one with the Customs Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and construc-
tion.

Commence-
ment.

2.—(1) With the exception of sections 6, 7, 9 and 10, this Act comes into operation on the 1st day of October, 2014.

(2) Sections 6, 7, 9 and 10 shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Saving.

3. Nothing contained in this Act shall affect the validity of anything done under the principal Act before the coming into operation of this Act.

Amendment
to section 2
of principal
Act.

4. Section 2 of the principal Act is amended—

(a) by inserting the following definitions in the appropriate alphabetical sequence—

““authorized user” means a person who has been authorized under section 206B(3) to use the Customs System;

“Customs Agency” means the Jamaica Customs Agency designated under the *Executive Agencies (Jamaica Customs Agency) Order, (Designation of Executive Agency) Order, 2013*, made under section 4 of the *Executive Agencies Act*;

“Customs System” and “System” mean the electronic communication system established under section 206A;

“electronic” has the same meaning as in section 2 of the *Electronic Transactions Act* and “electronically” shall be construed accordingly;

“registered”, in relation to a declaration, means accepted by way of the issuance electronically of a registration number in the Customs System in respect of the declaration;” and

(b) in the definition of “officer”, by deleting the words “Department of Customs and Excise” and substituting the words “Jamaica Customs Agency”.

5. The principal Act is amended by inserting the following next after section 4 as section 4A—

Insertion of new section 4A in principal Act.

“Obligation for secrecy.

4A.—(1) Subject to subsection (2)—

- (a) every person having an official duty under, or being employed in the administration of, this Act shall regard, and deal with as secret and confidential, all documents and information in respect to any matter under this Act;
- (b) no person referred to in paragraph (a) who has possession of, or control over, any document or information referred to in that paragraph shall disclose such information or anything contained in such document to any person.

(2) Nothing in this section shall prevent the disclosure of information or production of documents—

- (a) by any person for the purposes of this Act;
- (b) by the Commissioner, or an officer authorized by the Commissioner, to departments of the Government, public bodies (within the meaning of section 2 of the *Public Bodies Management and Accountability Act*) or Executive Agencies (within the meaning of section 2 of the *Executive Agencies Act*) for the purpose of assisting them in the performance of their powers, functions or duties under any enactment;
- (c) by the Commissioner pursuant to a requirement under any enactment, or any treaty, international agreement or arrangement to which Jamaica is a party;

- (d) by the Commissioner to any person pursuant to an agreement entered into between the Commissioner and that person for the purpose of assisting the Commissioner in carrying out the powers, functions and duties of the Commissioner under the Act;
- (e) by any person who is authorized by the Commissioner, under an agreement referred to in paragraph (d), to disclose information or produce documents to any other person, and who acts in accordance with the agreement; or
- (f) with the consent of the person who provided the information or document.

(3) A person who contravenes paragraph (a) or (b) of subsection (1) commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars and, in default of payment thereof, to imprisonment for a term not exceeding one year."

Repeal and replacement of section 14 of principal Act.

6. Section 14 of the principal Act is repealed and the following are substituted therefor as sections 14 and 14A—

"Time for ascertaining rate of duty payable.

14.—(1) Unless otherwise provided under this Act, duty shall be payable on goods at the rate of duty in force—

- (a) in the case of imported goods where a declaration in respect of the importation of the goods is submitted, at the time when the declaration is first registered in the Customs System;
- (b) in the case of goods that are being exported, at the time when a declaration in

respect of the exportation of the goods is first registered in the Customs System;

- (c) in any other case, at the time of the importation or exportation of the goods.

(2) In the case of goods that are removed from a Queen's warehouse or a private warehouse for use within Jamaica, the declaration referred to in subsection (1) shall be registered in the Customs System at the time of the removal of the goods from the warehouse.

(3) In the case of imported goods that are subject to a bond or other security, the declaration referred to in subsection (1) shall be registered in the Customs System at such time as may be determined by rules made by the Commissioner for this purpose.

Information to be specified in declaration.

14A. For the purposes of this Act, a person who makes a declaration in respect of goods shall, at the time of making the declaration, specify the classification of the goods and also—

- (a) where the declaration is registered in the Customs System, the appropriate customs procedure code for the goods;
- (b) in any other case, the rate of duty applicable to the goods.”.

7. Subsection (6) of section 19 of the principal Act is deleted and the following is substituted therefor—

Amendment of section 19 of principal Act.

“ (6) Where, in determining the value of goods under subsection (1), it is necessary to establish the equivalent in Jamaican currency of any other currency, the rate of exchange between those currencies shall be the most recent spot market weighted average selling rate (as determined by the Bank of Jamaica) at the time when duty on the goods is payable under section 14.”.

Repeal of section 19A of principal Act.

8. Section 19A of the principal Act is repealed.

Repeal and replacement of sections 65 to 68 of principal Act.

9. Sections 65 to 68 of the principal Act are repealed and the following sections are substituted therefor—

“Report to be provided before arrival of aircraft or ship.

65.—(1) The Master of an aircraft or ship, or the agent of the Master or owner of an aircraft or ship, shall, before the arrival of the aircraft or ship in Jamaica, submit to the Commissioner a report (in a form and manner to be prescribed in rules made under section 206F), which shall include the following information—

- (a) the estimated time of arrival of the aircraft or ship;
- (b) the Customs area at which the aircraft or ship will arrive;
- (c) a list of any of the aircraft’s or ship’s cargo for discharge within Jamaica;
- (d) a list of any of the aircraft’s or ship’s cargo that is not intended for discharge within Jamaica;
- (e) a list of any of the aircraft’s or ship’s cargo that is intended for discharge within Jamaica for subsequent transshipment; and
- (f) a list of all passengers and crew on board the aircraft or ship.

(2) Subject to subsection (3), the Master or agent shall submit the report referred to in subsection (1)—

- (a) in the case of a ship, no later than 24 hours before the arrival of the ship in Jamaica or within such other period as the Minister may by order prescribe; and

- (b) in the case of an aircraft, no later than 15 minutes after departure of the aircraft for Jamaica or within such other period as the Minister may by order prescribe.

(3) If the Commissioner is satisfied that it is not possible for the Master or agent to submit the report in respect of the aircraft or ship within the time required by subsection (2) for any reason, the Commissioner may exempt the Master or agent from having to comply with subsection (2), in which case the report shall be submitted immediately upon arrival of the aircraft or ship.

(4) Where information required under subsection (1) is provided by electronic means, the Commissioner shall ensure that a receipt of the information is generated and transmitted by electronic means to the person who sent the information.

(5) In the case of goods that are shipped in bulk, the information required under subsection (1) shall, unless otherwise permitted by the Commissioner, be provided before bulk is broken and shall show separately any goods that are –

- (a) in transit; or
- (b) to be transhipped.

(6) A Master or agent who fails to comply with the provisions of this section, or who provides false or misleading information in any report that is submitted under subsection (1), shall incur a penalty of one million dollars and all goods not duly reported shall be forfeited, unless the failure to report such goods or otherwise to comply with the provisions of this section is explained to the satisfaction of the Commissioner.

Additional penalties for failure to submit report.

66. Where a Master or agent fails to comply with section 65, the Commissioner may refuse to grant inwards or outwards clearance to the aircraft or ship until the later of the following dates—

- (a) the date when the report required under section 65(1) in respect of the aircraft or ship is submitted to the Commissioner; and
- (b) the date when any penalty imposed under section 65 (6) is paid.

Requirement to proceed to Customs area.

67.—(1) The Master of an aircraft or a ship, or the owner of an aircraft or a ship, that arrives in Jamaica shall cause the aircraft or ship to proceed directly to the Customs area referred to in section 65(1)(b), unless otherwise directed by the Commissioner.

(2) A person who imports goods into Jamaica in an aircraft or a ship shall not bring those goods into Jamaica at any place other than a Customs area.

(3) A person who fails to comply with the provisions of this section commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars and, in default of payment thereof, to imprisonment for a term not exceeding one year.

Account of cargo to be provided.

68.—(1) The Master of an aircraft or a ship, or the agent of the Master or owner of an aircraft or a ship, that arrives in Jamaica shall, within 48 hours after any cargo has been discharged from the aircraft or ship, but no later than the time of delivery of the cargo to the importer of the cargo, submit to the Commissioner an account of all the cargo that was discharged from the aircraft or ship.

(2) Notwithstanding subsection (1), the Commissioner may exempt any person from having to submit an account in respect of perishable goods, medical supplies or other goods if the Commissioner is satisfied that those goods or supplies require urgent clearance.

(3) A person who fails to comply with the provisions of subsection (1), or who provides false or misleading information in any account of cargo that is submitted under subsection (1), shall incur a penalty of one million dollars, and all cargo not duly accounted for shall be forfeited unless the failure to account for such cargo or otherwise to comply with the provisions of this section is explained to the satisfaction of the Commissioner.”.

10. Section 72 of the principal Act is repealed and the following is substituted therefor—

Repeal and replacement of section 72 of principal Act.

“Penalty for wrongly breaking bulk.

72. The Master of an aircraft or a ship, or the agent of the Master or owner of an aircraft or a ship, who, without the consent of the Commissioner in writing—

- (a) causes bulk to be broken before the information required under section 65(5) is provided; or
- (b) permits any goods to be thrown overboard, or any packages to be opened at any time after the arrival of the aircraft or ship in Jamaica and before such aircraft or ship arrives at a Customs area,

shall incur a penalty of one million dollars, and all goods comprised in any bulk so broken and all packages so opened or thrown overboard shall be forfeited, unless the breach of paragraph (a) or (b) is explained to the satisfaction of the Commissioner.”.

Insertion of
new Part
VIII A of
principal
Act.

11. The principal Act is amended by inserting the following next after section 206 as Part VIII A—

“

PART VIII A—*Customs System*

Commissioner may establish electronic communication system. 206A.—(1) The Commissioner may establish an electronic communication system for any or all of the following purposes—

- (a) the communication by electronic means of any document or information that is required or authorized to be provided under this Act by any person to the Commissioner or by the Commissioner to any person;
- (b) the payment or collection, by electronic means, of customs duties or any other tax, duty, fee or other amount collectible by the Commissioner;
- (c) expediting the process of dealing with the importation and exportation of goods and the movement of persons entering and leaving Jamaica.

(2) No person, other than an officer, shall use the Customs System unless that person has been authorized by the Commissioner to use the System.

Application for authorization to use the Customs System.

206B.—(1) A person other than an officer (hereinafter called an “applicant”) may apply to the Commissioner for authorization to use the Customs System by submitting an application to the Commissioner in a form and manner prescribed in rules made under section 206F.

(2) The Commissioner may require an applicant to provide additional information that the Commissioner considers necessary for the purposes of deciding whether to grant an application.

(3) If the Commissioner is satisfied that an applicant meets the prescribed criteria as specified in rules made under section 206F, the Commissioner may grant the authorization, in writing, subject to such terms and conditions as the Commissioner may impose.

(4) If the Commissioner is not satisfied that an applicant meets the criteria referred to in subsection (3), the Commissioner shall refuse to grant the authorization applied for.

(5) Notwithstanding subsections (1) and (2), a person duly licensed under this Act to practice as a customs broker shall be deemed to be an authorized user, and accordingly—

- (a) the power of the Commissioner to impose terms and conditions under subsection (3); and
- (b) the provisions of sections 206C, 206D and 206E,

shall apply to such person as they apply in relation to any other authorized user.

Suspension
or
revocation
of
authorization.

206C. The Commissioner may revoke an authorization granted to a person under section 206B(3), or suspend it for such period as the Commissioner may determine, if—

- (a) the person, in writing, requests the Commissioner to revoke or suspend the authorization;
- (b) the person fails to comply with any terms or conditions imposed in respect of the authorization or with any provision of this Act or rules or regulations made under this Act;

- (c) the person has provided false or misleading information with regard to the person's application for the authorization;
- (d) the person has been convicted of an offence under this Act;
- (e) the Commissioner is satisfied that the person no longer meets the criteria referred to in subsection (3); or
- (f) the Commissioner considers that the authorization is no longer required.

Procedure
for refusal,
suspension or
revocation
of
authorization.

206D.—(1) Subject to section 206E, before the Commissioner refuses to grant an authorization to a person or suspends or revokes a person's authorization, the Commissioner shall give written notice to the person of the proposed refusal, suspension or revocation stating therein—

- (a) in the case of suspension or revocation, the proposed effective date of the suspension or revocation;
- (b) the grounds for the proposed refusal, suspension or revocation; and
- (c) the period referred to in subsection (2), within which the person may make written representations.

(2) A person who has been given notice by the Commissioner of a proposal to refuse the grant of an authorization, or to suspend or revoke an authorization, may, within seven days after receipt of that notice, or such longer period as the Commissioner may in the circumstances allow and notify to the person, make written representations as to why the authorization should be granted, or not suspended or revoked, as the case may be.

(3) After consideration of any representations made under subsection (2) in respect

of a proposal to refuse the grant of an authorization, or to suspend or revoke an authorization, the Commissioner may—

- (a) confirm the proposal and proceed to refuse the grant of the authorization, or suspend or revoke the authorization, as the case may be;
- (b) withdraw the proposal; or
- (c) modify the proposal and proceed to implement the proposal as modified.

(4) Where a person's application for an authorization has been refused or where a person's authorization has been revoked, that person may, at any time after such refusal or revocation, make a fresh application under this section for an authorization.

Immediate suspension of authorization.

206E. —(1) Notwithstanding section 206D, the Commissioner may suspend any person's authorization with immediate effect in accordance with this section.

(2) The Commissioner shall not act under subsection (1) unless he is satisfied that immediate suspension is required in order to—

- (a) preserve the integrity of the Customs System;
- (b) prevent the occurrence of fraud on the revenue or other unlawful revenue loss;
- (c) protect the interest of national security; or
- (d) otherwise protect the public interest.

(3) Upon suspending a person under this section, the Commissioner shall give written notice to the person thereof stating—

- (a) the date on which the suspension took effect; and

(b) the grounds for suspension, including only such information that the Commissioner is satisfied is not likely to—

- (i) facilitate;
- (ii) exacerbate; or
- (iii) compromise the investigation of,

the circumstance that has become the basis for the Commissioner to act under subsection (1).

(4) An authorized user that has been given notice by the Commissioner of the immediate suspension of that user's authorization may, within seven days after receipt of that notice, or such longer period as the Commissioner may in the circumstances allow and notify to the person, make written representations as to why the suspension should be withdrawn.

(5) After consideration of any representations made under subsection (3) in respect of the suspension of an authorization, the Commissioner may—

- (a) withdraw the suspension;
- (b) confirm the suspension and determine the period for which it shall continue; or
- (c) revoke the authorization.

Rules
regarding
Customs
System.

206F. The Commissioner may make rules regarding the operation and use of the Customs System, including, without prejudice to the generality of that power, rules in respect of any or all of the following matters—

- (a) the form and manner of applying for authorization to use the System and the information to be provided by an applicant;

- (b) the criteria to be met by a person who applies for authorization;
- (c) standard terms and conditions that may be imposed with regard to the grant of an authorization, without limiting the power of the Commissioner to specify other or additional terms and conditions, if the Commissioner so determines;
- (d) the procedure under section 206D consequent upon refusal, suspension or revocation of an authorization;
- (e) the procedure under section 206E consequent upon the immediate suspension of an authorization;
- (f) the type of documents that may be sent through the System, including the format and manner for sending, and notifying receipt of, documents;
- (g) the format for, and the content of, information that is to be included in documents or with payments sent through the System;
- (h) requirements with regard to authentication codes for access to the System;
- (i) requirements with regard to encrypted signatures in respect of documents sent by means of the System;
- (j) requirements as to confidentiality and non-disclosure in relation to use of the System;
- (k) the manner of dealing with situations that may arise upon any breakdown or interruption in the operation of the System, including the correction of any errors, or the amendment of any documents,

information or procedures that may be required as a result of the breakdown or interruption;

- (l) the making, by authorized users, of copies of documents stored in the System;
- (m) any other matter for the efficient administration or operation of the System.

Penalties
with regard
to Customs
System.

206G. Any person who—

- (a) falsifies or, without the permission of the Commissioner, deletes, damages, alters or impairs a document or information that is stored in the Customs System, or that is stored on any duplicate tape, disc or other medium on which information is held or stored in the System;
- (b) makes a copy of a document or information that is stored in the Customs System, or that is stored on any duplicate tape, disc or other medium on which information is held or stored in the System, without being authorized to do so;
- (c) being an authorized user, or an employee or agent of an authorized user, fails to comply with any terms or conditions imposed on the authorized user in respect of use of the System;
- (d) not being an authorized user or an employee or agent of an authorized user, uses the System; or
- (e) uses the authentication code of an authorized user to access the Customs System without the authority of the authorized user,

commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars and, in default of payment thereof, to imprisonment for a term not exceeding one year.

Application of *Electronic Transactions Act*.

206H. Subject to the provisions of this Part and any rules made under section 206F, the provisions of the *Electronic Transactions Act* shall apply in respect of an electronic communication system that is established under section 206A.”.

12. The principal Act is amended by inserting the following next after section 223 as section 223A—

Insertion of new section 223A in principal Act.

“Application of section 223 to electronics documents.

223A.—(1) For greater certainty, the references in section 223(1) to invoices and to books of account include a reference to those types of documents that are in electronic form.

(2) An importer, exporter or any person concerned in the importation or exportation of any goods shall provide an officer with access to documents in electronic form of the types referred to in subsection (1), and permit the officer to make copies of such documents, for the purposes of the officer carrying out any powers, duties or functions under section 223(1).”.

Passed in the House of Representatives this 23rd day of September, 2014 with two (2) amendments.

MICHEAL A. PEART
Speaker.

Passed in the Senate this 26th day of September, 2014 with two (2) amendments.

FLOYD E. MORRIS
President.

On this 30th day of September, 2014 the House of Representatives agreed to the amendments by the Senate.

MICHAEL A. PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

(Sgd.) *H. E. COOKE (Mrs.)*
Clerk to the Houses of Parliament.