

**PART XIII  
POWERS**

**117. Patrol and surveillance.**

(1) Subject to subsection (3), any customs officer may, for the purposes of detecting offences committed against this Act or any other customs enactment—

(a) at any time and in such manner as the officer considers appropriate, patrol upon and pass freely along and over any part of Saint Christopher and Nevis, whether or not such part is private property; and

(b) subject to subsection (2), remain in any such part for the purpose of carrying out investigations or surveillance respecting the offence.

(2) Where the customs officer has reasons to believe that he or she is likely to remain on any private property, for the purpose of any patrol or surveillance under this section—

(a) the customs officer may, as soon as practicable, notify the owner of such property if it is necessary but is not obligated to do so; and

(b) the owner of such property shall not unreasonably refuse to give access to such property.

(3) This section does not authorise the entry into any dwelling-house or other residential premises, the offices of any private business or such other private property without—

(a) the permission of the occupant; or

(b) a warrant issued by a Magistrate for that purpose.

(4) An officer proceeding as authorised under subsection (1) is not liable to any criminal or civil proceedings for so doing.

**118. Power to land, moor, etc vessels and aircraft.**

(1) Any customs officer in command or in charge of a vessel or an aircraft engaged in the prevention of smuggling may, at any place in Saint Christopher and Nevis—

(a) anchor, moor or berth that vessel;

(b) haul that vessel ashore; or

(c) land that aircraft.

(2) Any customs officer who carries out any act referred to in subsection (1) is not liable to any criminal or civil proceedings for carrying out any such act.

**119. Power to board vessels and aircraft.**

(1) At any time while a vessel is within the territorial sea or contiguous zone of Saint Christopher and Nevis, or an aircraft is at any customs airport, any customs officer may—

(a) require the vessel or aircraft to stop;

(b) board and remain on board the vessel or aircraft; or

(c) search any part of the vessel or aircraft.

(2) Any customs officer on board a vessel or an aircraft in accordance with subsection (1) may-

(a) cause goods to be marked before they are unloaded or unshipped from

that vessel or aircraft;

- (b) examine goods in the course of their being unloaded or unshipped from that vessel or aircraft;
- (c) lock up, seal, mark or otherwise secure goods or their containers carried in or on that vessel or aircraft;
- (d) break open any area or container which is locked if keys in respect of the area or container are not provided;
- (e) require any document or book which is required to be kept and maintained on board that vessel or aircraft to be produced to him or her for examination; or
- (f) require a specified person to answer questions put to the person by the officer in relation to the vessel or aircraft including its cargo, stores, baggage, crew, passengers and voyage or flight.

(3) A person commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars if the person -

- (a) prevents any customs officer from performing any acts referred to in subsection (2);
- (b) obstructs any customs officer in the exercise of any duties under subsection (2); or
- (c) refuses to produce any documents requested, or to answer any questions put to him or her under subsection (2).

(4) Any goods -

- (a) in respect of which an offence is committed under subsection (3) are liable to forfeiture; or
- (b) found concealed on board a vessel or an aircraft at any customs port or airport are liable to forfeiture.

(5) Where the master or commander of a vessel or an aircraft refuses to stop or permit any customs officer to board the vessel or aircraft when required to do so under subsection (1)—

- (a) the master or the commander commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years or both and may be arrested; and
- (b) the vessel or the aircraft is liable to forfeiture.

(6) Where -

- (a) the crew of a vessel refuses to stop the vessel when required to do so under subsection (1) and chase is given; and
- (b) the identity of the master of the vessel cannot be ascertained,

each person who is a member of the crew on that vessel during the chase commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars or two years imprisonment or both and may be arrested.

(7) For the purposes of subsection (2)(f), “specified person” means -

- (a) the master, the commander, the owner, the operator and any member of the crew of a vessel or an aircraft to which this section applies;

- (b) the agent of the master, commander or owner of a vessel or an aircraft to which this section applies; or
- (c) any passenger on a vessel or an aircraft to which this section applies.

#### **120. Power to station officer on vessels.**

(1) The Comptroller may station a customs officer on board a vessel at any time while the vessel is within Saint Christopher and Nevis.

(2) Where a customs officer is stationed under subsection (1) on board a vessel, the master of the vessel shall provide -

- (a) proper and sufficient food and water, together with reasonable accommodation for the customs officer; and
- (b) such means of safe access to and egress from that vessel as required by the customs officer.

(3) The master of a vessel on which a customs officer is stationed under subsection (1) who neglects or refuses to provide the food, water and safe means of access to and egress from the vessel under subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

#### **121. Right of access.**

(1) Without prejudice to any other power contained in this Act, any customs officer has a right of access to and a power of search of -

- (a) any part of a customs controlled area; and
- (b) any vehicle or goods found at a customs controlled area.

(2) The power of search under subsection (1) includes the power to break into or open any locked building, vehicle, place or container which is required to be searched.

(3) Any goods concealed at any part of a Customs Controlled Area or in any vehicle found at such a place shall be liable to forfeiture.

#### **122. Searching of vessels and aircraft.**

(1) Any customs officer may search any vessel or aircraft which-

- (a) has arrived in or within Saint Christopher and Nevis;
- (b) is departing from Saint Christopher and Nevis to a place outside Saint Christopher and Nevis and at all times while the vessel or aircraft is travelling within Saint Christopher and Nevis en-route to a point outside Saint Christopher and Nevis;
- (c) not being a vessel or an aircraft to which paragraph (a) or (b) applies, is carrying any international cargo, while the vessel or aircraft remains within Saint Christopher and Nevis; or
- (d) not being a vessel or an aircraft to which paragraph (a), (b) or (c) applies, a proper officer has reasonable cause to suspect, while the vessel or aircraft is in Saint Christopher and Nevis-
  - (i) is carrying dutiable, uncustomed, prohibited, restricted or forfeited goods, or

(ii) has been, is being, or is about to be otherwise concerned in the commission of an offence against this Act.

(2) In the exercise of the power of search under subsection (1), a customs officer may—

(a) using such force as is reasonably necessary in the circumstances—

(i) enter every part of the vessel or aircraft, or

(ii) open any package, locker or other place on or in the vessel or aircraft; or

(b) examine all goods found on the vessel or aircraft.

(3) A person who prevents or obstructs a customs officer from exercising a power under this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

### 123. Power to search premises.

(1) Subject to section 165, where any customs officer has reasonable grounds to believe that an article liable to forfeiture under any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment the customs officer may, after being authorised in writing by the Comptroller to do so—

(a) enter that building or place at any time, and search for, seize, detain or remove anything that appears to him or her to be liable to forfeiture;

(b) so far as is reasonably necessary for the purpose of the entry, search, detention or removal, break open any lock, seal, shutter, door, window or container and force out and remove any obstruction, obstacle or other impediment; and

(c) search for and remove any invoice, bill of lading, books, ledger, paper or other document or record relating to any matter in relation to which the Comptroller is for the time being required by or under any enactment to perform any duty.

(2) Where, in the case of any entry, search, seizure, detention or removal under this section—

(a) damage is caused to any property including goods; and

(b) goods liable to forfeiture are not found,

the owner of the damaged property is entitled to recover from the Comptroller no more than twenty-five hundred dollars for the costs of repairing that damage.

(3) A person who prevents or obstructs an entry on any property or any search, seizure, detention or removal under this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

(4) Notwithstanding subsection (1), an officer shall not enter a private dwelling except with the consent of the occupant or the owner of the dwelling or under a warrant issued under this Act.

#### **124. Power to search vehicles.**

**(1) Where a customs officer has reasonable grounds to believe that -**

- (a) there are in or on any vehicle, within a customs controlled area, any dutiable, uncustomed, prohibited or forfeited goods; or**
- (b) there are in or on any vehicle, outside a customs controlled area, any goods which have been unlawfully imported or are in the process of being unlawfully exported, the customs officer may—**
- (c) stop and search the vehicle; and**
- (d) detain the vehicle for such period as is reasonably necessary for that purpose.**

**(2) Notwithstanding any other power provided under this Act, where a customs officer has reasonable grounds to believe that a vehicle is carrying any article which is liable to forfeiture, the customs officer may stop and search the vehicle.**

**(3) Where the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched when requested to do so under subsection (1) or (2), the person commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars, or two years imprisonment or both and may be arrested.**

#### **125. Securing goods.**

**For the purpose of performing any function or exercising any power which is required or authorised under this Act, a customs officer may, while boarding or searching any vessel or aircraft-**

- (a) secure, by appropriate means, goods on board that vessel or aircraft; or**
- (b) remove goods on board that vessel or aircraft to a secure place.**

#### **126. Power to search persons.**

**Where a customs officer or a police officer has reasonable grounds to believe that a person has in his or her possession anything which is liable to forfeiture, the officer may stop and, subject to section 127, search that person and anything which that person has with him or her or has in his or her possession.**

#### **127. Procedure on exercising power to search persons.**

**(1) Where a search of any person is to be conducted under this Act –**

- (a) a female person shall not be searched except by a female person; and**
- (b) a minor, whether male or female, shall not be searched except in the presence of his or her parent.**

**(2) A person, before he or she is searched, may request to be taken with all reasonable dispatch before the superior officer on duty or magistrate for a review of the need for the search.**

**(3) Where—**

(a) a person is detained under this Act to be searched; and

(b) there is no suitable person, available at the place where the search is to be conducted, to conduct the search,

the person detained may be taken to another place to be searched.

(4) A customs officer is not liable to any prosecution or action at law by reason of any search made in accordance with this section.

(5) Where an intimate search of a person is to be conducted, such a search shall only be conducted by a medical practitioner or registered nurse.

(6) In this section—

“minor” means anyone under twelve years of age;

“intimate search” means any search which involves a physical examination (that is, an examination which is more than simply a visual examination) of a person’s body orifices;

“parent”, in relation to a minor, includes—

(a) a guardian of the minor ;

(b) every person who is liable to maintain or who has the custody of the minor;

(c) a person living as husband with the mother of the minor, whether or not he or she is the father; and

(d) a person living as wife with the father of the minor, whether or not she is the mother.

#### 128. Application of sections 129, 130 and 131.

Sections 129, 130 and 131 apply to -

(a) a person on board a vessel or an aircraft which has arrived in, or is departing from, Saint Christopher and Nevis;

(b) a person in the process of disembarking from, or embarking on to, a vessel or an aircraft described in paragraph (a); and

(c) a person who, having entered into Saint Christopher and Nevis at a customs place, remains in that customs place.

#### 129. Preliminary search of persons by use of aids.

(1) A customs officer may—

(a) conduct a preliminary search of a person to whom section 128 applies; and

(b) for the purposes of conducting the preliminary search, detain such a person.

(2) For the purposes of this section, a preliminary search is a search which -

(a) involves little or no physical contact between the person conducting the search and the person being searched; and

- (b) is conducted by using any aid, including a dog, a chemical substance, or an x-ray or imaging equipment, or some other mechanical, electrical or electronic device or other similar aid, but not by any more invasive means.

**130. Searching persons suspected of having concealed items.**

(1) This section applies to any person who-

- (a) is in a customs controlled area;
- (b) has arrived or previously arrived in Saint Christopher and Nevis at a place other than a customs port or airport; or
- (c) is about to depart from Saint Christopher and Nevis from any place other than a customs port or airport.

(2) A customs officer may cause a person to whom this section applies to be searched if the proper officer has reasonable grounds to suspect that the person has concealed on or about his or her person -

- (a) any dutiable, uncustomed or prohibited goods under this Act or any other enactment;
- (b) any goods liable to forfeiture under this Act or any other enactment;
- (c) evidence relating to any goods referred to in paragraph (a) or (b); or
- (d) any article which is or is likely to be evidence of the contravention of this Act.

(3) A customs officer may—

- (a) use such force as is reasonably necessary in the circumstances to detain or search any person to whom this section applies; and
- (b) for the purpose of such search, require such other person as the officer thinks necessary to assist him.

(4) A search of a person may be conducted under this section whether or not the person has earlier been the subject of a preliminary search under section 129.

**131. Searching of persons for dangerous items.**

(1) A customs officer or police officer may immediately detain and search a person if the officer has reasonable grounds to believe that -

- (a) the person has a dangerous item on or about his or her person; and
- (b) the item poses a threat to the safety of the officer or any other person.

(2) A customs officer or police officer who undertakes a search under this section shall, within five working days of the search, give a written report to the Comptroller of—

- (a) the search;
- (b) the circumstances in which the search was conducted; and
- (c) the matters which gave rise to the reasonable belief that the person searched had a dangerous item on or about his or her person.

**(3) For the purposes of this section, “dangerous item includes -**

- (a) any firearm and ammunition as defined in section 2 of the Firearms Act Cap. 19.05; and**
- (b) any substance, item, article or device which could be used to endanger the safety of a person.**

**132. Seizure of items and articles found.**

**(1) A customs officer may seize any article or item found when carrying out a search under section 130 which the officer has reasonable grounds to believe is an item or article referred to in that section.**

**(2) A customs officer may seize any substance, item, article or device found on or about a person when carrying out a search under section 131 which the officer has reasonable grounds to believe is a substance, an item, an article or a device referred to in that section.**

**133. Questioning of persons in customs controlled areas.**

**(1) A customs officer may, in relation to any international cargo or domestic cargo, question -**

- (a) any person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody or dispatch of international cargo or domestic cargo by that airline or shipping company;**
- (b) any person employed by the operator of a customs controlled area licensed for -**
  - (i) the processing of vessels or aircraft arriving in or departing from Saint Christopher and Nevis,**
  - (ii) the loading or unloading or unshipping of goods on or from vessels or aircraft arriving in or departing from Saint Christopher and Nevis, or**
  - (iii) the temporary holding of imported goods for the purposes of the examination of those goods, including the holding of any goods awaiting examination; or**
- (c) any person who is in a customs controlled area licensed for a purpose described in paragraph (b).**

**(2) A customs officer may question any person, or all of the following persons, about any cargo destined to be exported -**

- (a) a person who is the owner or operator of a vehicle which a customs officer has reasonable cause to suspect has or previously had in or on the vehicle, goods subject to customs control;**
- (b) a person who is the owner, occupier or operator of premises which a customs officer has reasonable cause to suspect has or previously had in or on the premises, goods subject to customs control;**

(c) a person employed by a person described in paragraph (a) or (b).

#### **134. Power to carry and use firearms.**

(1) The Comptroller may authorise a customs officer to carry a firearm if the Comptroller is satisfied that it is necessary for the protection of any customs officer engaged in the performance of any duty.

(2) A customs officer may use the firearm authorised to be carried under subsection (1) if the use is necessary for the preservation of life.

#### **135. Firing on vessels.**

(1) The customs officer in charge of any properly identified vessel in the service of the State shall, having hoisted or displayed the proper identification within the territorial sea or contiguous zone of Saint Christopher and Nevis, chase any vessel if the master of the vessel -

- (a) fails to comply with any signal or instruction given by the customs officer; or
- (b) refuses to permit the vessel to be boarded by the customs officer.

(2) Subject to subsection (3), where the master of a vessel fails to stop the vessel or comply with any signal or instruction given under subsection (1)(a), the customs officer in charge of any properly identified vessel in the service of the State may, as a last resort after having fired a warning shot, fire at or onto the vessel to compel it to bring-to or stop.

(3) The customs officer may only fire at or onto a vessel if he or she is satisfied that—

- (a) the master or person in charge of the vessel—
  - (i) is aware of the signal or instruction given under subsection (1), or
  - (ii) fails or refuses to stop; and
- (b) a warning shot has been fired.

#### **136. Detention of vessels and aircraft.**

(1) This section applies where a proper officer has reasonable cause to believe that—

- (a) an offence against this Act or any other enactment has been, is being or is about to be committed on or with the use of a vessel or an aircraft while the vessel or aircraft was or is within Saint Christopher and Nevis; or
- (b) there is on board or in a vessel or an aircraft within Saint Christopher and Nevis a person who was carried on the vessel or aircraft into Saint Christopher and Nevis in contravention of this Act or any other enactment.

(2) Where subsection (1) applies, the customs officer

may— (a) direct the vessel or aircraft—

- (i) to proceed to the nearest customs controlled area or such other place as the customs officer considers appropriate, or

(ii) to remain in or at the place where it is; and

(b) detain the vessel or aircraft for such time and for such purposes reasonably necessary to carry out an investigation respecting the commission of the offence.

(3) Notwithstanding any other power of seizure under this Act, where the person in charge of a vessel or an aircraft to which this section applies attempts to or threatens to cause the vessel or aircraft to depart, without a certificate of clearance, from a place—

(a) to which the vessel or aircraft has been directed to proceed under subsection (1); or

(b) in or at which the vessel or aircraft has been directed to remain under subsection (2),

the customs officer may seize and detain the vessel or aircraft until a certificate of clearance in respect of the vessel or aircraft has been obtained.

### 137. Power to examine and take account of goods.

(1) Notwithstanding anything contained in any customs enactment to the contrary, a proper officer may—

(a) examine any goods—

(i) which have been imported,

(ii) which are in a warehouse or customs warehouse,

(iii) which have been loaded on or unloaded or unshipped from any vessel or aircraft at any place in Saint Christopher and Nevis,

(iv) which have been entered for exportation or for use as stores,

(v) which have been brought to any place in Saint Christopher and Nevis for exportation or for use as stores, or

(vi) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made; and

(b) for the purpose of such examination, require any container in which goods are kept to be opened or unpacked.

(2) A proper officer shall examine the goods under subsection (1) at such time and place as the officer may direct.

(3) The owner of goods to which this section applies shall

– (a) bear the expense of -

(i) transporting the goods to a place directed under subsection (2),

(ii) unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing the goods,

(iii) the application of any treatment to the containers in which the goods are kept, for the purposes of or incidental to the examination by the proper officer, and

- (iv) removing the goods for exportation or for use as stores or warehousing;  
and
  - (b) provide, or bear the expense of providing, any facilities or assistance required for the examination of the goods.
- (4) Where, without the authority of a proper officer—
- (a) imported goods which the proper officer has the power under this section to examine; or
  - (b) goods, other than imported goods, which a proper officer has directed to be brought to a place for the purposes of an examination,

are removed from customs control before the goods have been examined, such goods are liable to forfeiture.

**138. Examination of goods subject to customs control.**

- (1) A customs officer may—
- (a) examine, weigh, analyze or test, or cause to be examined, weighed, analyzed or tested—
    - (i) goods subject to customs control, or
    - (ii) goods which the officer has reasonable cause to believe are subject to customs control; and
  - (b) for any purpose specified in paragraph (a), open or cause to be opened any packages in which such goods are contained or believed to be contained.
- (2) Any reasonable expense incurred by the customs officer under subsection (1)—
- (a) is a civil debt owed to the State by the importer, exporter or owner of the goods; and
  - (b) is recoverable by legal action brought at the suit of the Comptroller on behalf of the State.
- (3) The powers conferred by or under subsection (1) extend to the examination, weighing, analyzing or testing of any suitcase, pallet, bulk cargo container, or other package subject to customs control.
- (4) The examination of the goods under this section may involve—
- (a) the physical or chemical testing of the goods; and
  - (b) the drilling into, or the dismantling of, the goods.
- (5) Subject to section 165, for the purpose of exercising the powers under this section in respect of goods which are, or are believed to be, subject to customs control, a customs officer shall be allowed free access—
- (a) to any land, building or place; and
  - (b) to any goods in or on any land, building or place.

### **139. Writ of assistance**

(1) Subject to subsection (2), the High Court may, on an application by the Comptroller, issue a writ of assistance.

(2) A writ of assistance issued under subsection (1) shall automatically expire on the day six months next following the date of its issue if not earlier cancelled by the High Court on an application by the Comptroller.

(3) An officer in possession of a writ of assistance issued under subsection (1) may—

- (a) at any time, enter into and search any house, shop, cellar, warehouse, room or any other place including any place where documents relating to uncustomed or prohibited goods can be reasonably expected to be found; and
- (b) in the case of resistance, use such force as is reasonably necessary to break open any door, chest, trunk and other package for the purpose of seizing and taking away any uncustomed or prohibited goods or any books or documents relating to such goods.

(4) Where the proper officer seizes any goods, books or documents under this section, the officer shall ensure that such goods, books or documents are adequately secured.

### **140. Examination of goods no longer subject to customs control.**

(1) This section applies to goods which have ceased to be subject to customs control, but which the Comptroller has reasonable grounds to suspect are goods –

- (a) in respect of which an offence against this Act has been committed; or
- (b) which are liable to forfeiture under this Act.

(2) The Comptroller may require a person who has, or whom the Comptroller believes has, possession or control of goods described in subsection (1) to—

- (a) produce such goods for inspection by a customs officer; or
- (b) otherwise account for such goods.

(3) For the purposes of this section, a customs officer may, in respect of goods described in subsection (1), exercise all the powers under sections 122 and 123.

(4) A customs officer may—

- (a) take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers under subsection (3); and
- (b) retain possession of such goods until the completion of the investigation into the grounds for suspecting that the goods are goods to which subsection (1) applies.

(5) A person who fails or refuses to produce or account for any goods when required to do so under this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

**141. Accounting for goods.**

(1) The Comptroller may, by notice in writing, require the operator of a customs controlled area to -

- (a) account for goods which the Comptroller believes have been entered into the customs controlled area; and
- (b) produce any documents, books or records, whether in electronic form or any other form, relating to the movement of goods into or out of the customs controlled area.

(2) An operator of a customs controlled area who fails or refuses to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

**142. Production of goods.**

(1) A proper officer may require the operator of a customs controlled area to produce to the officer goods which, according to any record, are within the customs controlled area.

(2) An operator of a customs controlled area who fails or refuses to produce, or account for, any goods when required to do so under this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

**143. Verification of entries.**

(1) The Comptroller may—

- (a) require, from a person making entry of goods, proof by declaration or the production of documents of the correctness of the entry, in addition to any declaration or documents otherwise required by this Act; and
- (b) refuse to deliver such goods or to accept such entry before the required proof is provided.

(2) Where the Comptroller is not satisfied with—

- (a) the correctness of an entry in relation to any goods; or
- (b) any other aspect of the importation or exportation of any goods to which an entry relates,

the Comptroller may detain the goods for such period as is reasonably necessary to enable the goods to be examined; and if necessary, to cause an investigation to be made, whether in Saint Christopher and Nevis or elsewhere, respecting the importation or exportation of the goods.

**144. Power to take samples.**

(1) A customs officer—

- (a) may, for the purposes of an examination, take and use samples of goods subject to customs control or believed to be subject to customs control; and

(b) shall dispose of such samples in such manner as may be prescribed.

(2) A sample taken in accordance with subsection (1) shall be as small as practically possible for the purpose for which it is taken.

(3) Where a sample of goods is taken under this section upon receipt of payment of the duty payable in respect of such sample, the customs officer shall return the sample or cause the sample to be returned to the person who was, at the time of the taking of the sample, the owner unless—

(a) such sample is liable to forfeiture; or

(b) it is impractical to return such sample to the person.

#### 145. Power of arrest.

(1) Subject to subsection (2), a customs officer or a police officer may arrest a person who has committed, or who that officer has reasonable grounds to believe has committed or is about to commit, an offence under any customs enactment.

(2) A customs officer or a police officer shall not arrest another person for an offence by virtue of subsection (1) more than seven years after the commission of the offence.

(3) Where a customs officer arrests a person under subsection (1), the customs officer shall, as soon as practicable, deliver the arrested person into the custody of a police officer.

#### 146. Escape from officer.

(1) Where a person subject to arrest under section 145 or any other customs enactment escapes from a customs or police officer attempting to arrest the person—

(a) any customs or police officer may, within seven years from the time of the commission of the offence, arrest and detain the person at any place in Saint Christopher and Nevis; and

(b) the arrested person shall be dealt with as if he or she were arrested at the time of the commission of the offence.

(2) Where a customs or police officer, for any reason, is unable or fails to arrest a person subject to arrest under section 145 or any other customs enactment—

(a) any customs or police officer may, within seven years from the time of the commission of the offence, arrest and detain the person at any place in Saint Christopher and Nevis; and

(b) the arrested person shall be dealt with as if he or she were arrested at the time of the commission of the offence.

#### 147. Power to pay rewards.

Subject to the approval of the Minister, the Comptroller may, in accordance with Regulations made under this Act, reward or give an award to a customs officer or any other

person for any service in relation to an assigned matter which appears to the Comptroller to merit a reward or an award.

**148. Power to require attendance.**

(1) Where under any customs enactment the master or the commander of a vessel or an aircraft is required to answer any question put to him or her by the Comptroller or a proper officer, the Comptroller or the officer may, at any time while –

- (a) the vessel is within the territorial sea or contiguous zone of Saint Christopher and Nevis; or
- (b) the aircraft is at any airport,

require the master or commander or relevant agent or, with the consent of the Comptroller or the proper officer, a senior officer of the vessel or aircraft, to appear in the office of the Comptroller or the proper officer.

(2) The master, commander or senior officer of a vessel or an aircraft or the relevant agent who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

**149. Power to require information and the production of evidence**

(1) A customs officer may, at any time within seven years from the date of the importation, exportation or carriage coastwise of any goods, require a concerned person—

- (a) to furnish to the customs officer, in such form and manner as the customs officer requires, any information relating to the goods;
- (b) to produce any invoice, bill of lading or other book or document relating to the goods in the control or possession of the concerned person; and
- (c) to permit the proper officer to inspect, take extracts from, make copies of or remove for a reasonable period any bill of lading, book or document referred to in paragraph (b).

(2) The Comptroller may require evidence to be produced to his or her satisfaction in support of any information provided in respect of -

- (a) goods imported, exported or carried coastwise; or
- (b) goods for which drawback, allowance, rebate, remission or repayment of duty is claimed.

(3) A person who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

(4) For the purposes of this section “concerned person” means a person concerned in –

- (a) the importation, exportation or carriage coastwise of goods; or
- (b) the carriage, unloading, landing or loading of goods.

#### **150. Power of Comptroller in special circumstances**

For the purpose of meeting the exigencies of any case to which a customs enactment cannot be conveniently applied, the Comptroller may permit—

- (a) the entry, unloading, removal and loading of goods; and
- (b) the report and clearance of vessels and aircraft, in such form and manner as the Comptroller may direct.

#### **151. Power to accept compensation for offence**

(1) Notwithstanding any other provision of this Act, where a person requests in writing that the offence be dealt with administratively, rather than through court proceedings, the Comptroller may, at any time prior to the commencement of proceedings in a court against the person for the offence —

- (a) impose a fine or penalty, not including imprisonment, not exceeding that prescribed for the offence;
- (b) seize the goods; or
- (c) mitigate or remit any fine or penalty or restore anything seized under the customs laws.

(2) This section shall not affect any right conferred by any written law to claim goods in the case of a seizure, or to commence or require the commencement of legal proceedings at any time prior to the payment of the fine or penalty.

(3) Subject to the powers of the Director of Public Prosecutions, the Comptroller may compound any offences under this Act.

#### **152. Power to require security.**

(1) Without prejudice to any express security requirement provided for by this Act or any other customs enactment, the Comptroller may, if he or she sees fit, require any person to give security by bond or otherwise for the observance of any condition or restriction in connection with an assigned matter.

(2) The Comptroller may, pending the giving of the required security, refuse to accept an entry or to perform any other act in relation to the matter with respect to which the security is required.

(3) Security may be required—

- (a) in relation to a particular transaction, transactions generally or a class of transactions;
- (b) for such period and amount as the Comptroller may direct; or
- (c) on such conditions respecting any penalty or otherwise, as the Comptroller may direct.

(4) Subject to any provision of this Act prohibiting release of security, where the Comptroller is satisfied that the obligations for which any security given in accordance with

this section have been fulfilled, he or she shall release the person who gave the security from the conditions of the security, as soon as reasonably practicable.

(5) Any bond taken for the purposes of an assigned matter—

- (a) is taken on behalf of the Government; and
- (b) may be cancelled at any time by order of the Comptroller.

(6) Where, at any time, the Comptroller is dissatisfied with the sufficiency of any security, the Comptroller may require a new security in place of, or in addition to, the existing security.

(7) If the new security required under subsection (6) is not given, the Comptroller may refuse to accept an entry or to perform any other act in relation to any matter with respect to which the new security is required.

(8) A person who is dissatisfied with a decision of the Comptroller under this section may, within twenty one working days after the date on which notice of the decision is given, request the Comptroller to reconsider the decision.

### 153. Power to require provision of facilities.

(1) A person required by or under this Act to provide a place to be used for the examination of goods by a proper officer shall –

- (a) provide and maintain such equipment and facilities as are reasonably necessary to enable a proper officer—
  - (i) to take account of or examine the goods, and
  - (ii) to conduct searches or perform such other duties as the Comptroller may direct;
- (b) keep any equipment in a convenient place approved by the proper officer for that purpose;
- (c) allow the proper officer to use the equipment at any reasonable time; and
- (d) provide the proper officer with any assistance necessary for the performance of the officer's duties.

(2) Subject to subsection (7), a person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(3) A person required by or under this Act to provide a place to be used for the examination of goods by a proper officer shall provide and maintain any fitting required for the purpose of affixing any lock or seal which the proper officer needs or is likely to need to affix to—

- (a) the premises, or any part of the premises, of the person; or
- (b) any conveyance or apparatus kept on such premises.

(4) Where there is default in providing or maintaining any fitting in accordance with subsection (3)—

- (a) the Comptroller may remedy the default by—
  - (i) providing or causing to be provided the fitting; or
  - (ii) carrying out or causing to be carried out any work necessary for the maintenance of the fittings; and
- (b) any expenses incurred in remedying the default shall be paid, on demand of the Comptroller, by the person in default.

(5) The expenses incurred under subsection (4) constitute, immediately on demand being made by the Comptroller, a debt owed to the State recoverable in accordance with this Act.

(6) Subject to subsection (7), a person who fails to pay the expenses on demand is, in addition to any other penalty liable on summary conviction to a fine of ten thousand dollars.

(7) Subject to regulations made for the resolution of disputes arising under this Act between the public body and the Customs Department, where a person required under this Act to provide a place to be used for the examination of goods by a proper officer is a public body—

- (a) subsections (2), (5) and (6) do not apply; and
- (b) if any dispute in respect of the obligation of the public body under subsection (1) arises between the Customs Department and that public body, the Comptroller shall, in writing, submit the matter to the Minister for a determination.

(8) A person required under this Act to provide a place to be used for the examination of goods by a proper officer commits an offence and is liable on summary conviction to a fine of ten thousand dollars if the person—

- (a) wilfully destroys or damages—
  - (i) any fitting or any lock,
  - (ii) any key provided for use with a lock, or
  - (iii) any label or seal placed on a lock;
- (b) improperly retains access to any place or article secured by a lock put in place by a proper officer; or
- (c) has any fitting or any article intended to be secured by means of a fitting constructed in such manner as to defeat the intention of this section.

#### **154. Audit and examination of records.**

(1) Subject to this section and to section 165, a customs officer may, at all reasonable times—

- (a) enter any premises or place where records are kept under section 99; and
- (b) audit or examine the records—

(i) in relation to any specific transaction, or

(ii) to assess the adequacy and integrity of the manual or electronic system by which the records are created and kept.

(2) For the purposes of subsection (1), a customs officer is entitled, subject to section 101 and subsection (5), to full and free access to—

(a) all lands, buildings and places; and

(b) all books, records, and documents,

whether in the custody or under the control of the licensee, importer, or exporter, or any other person.

(3) The full and free access referred to in subsection (2) shall be for the purpose of inspecting any books, records, documents, any property, process or matter which the officer considers—

(a) necessary or relevant for the purpose of collecting any duties due under any customs enactment;

(b) necessary or relevant for the purpose of carrying out any function lawfully performed by a customs officer; or

(c) likely to provide any information otherwise required for the purposes of enforcing any customs enactment.

(4) The customs officer may, without fee or reward, take extracts from or make copies of any books, records or documents to which this section applies.

(5) A customs officer shall not enter any private dwelling except with the consent of the occupant or owner or under a warrant issued in accordance with this Act.

#### 155. Requirement to produce documents

(1) Where—

(a) goods have been seized under this Act; or

(b) a customs officer has reasonable cause to believe that goods have been or are likely to be unlawfully imported, exported, undervalued, entered, removed, or otherwise have been unlawfully dealt with by any person in contravention of this Act,

the Comptroller may, by written notice, require any person to comply with the requirements specified in subsection (2) if the customs officer believes that the person—

(c) is or has been the owner, importer or exporter of such goods;

(d) is or has been an agent of the owner, importer or exporter of the goods; or

(e) has been concerned in the unlawful activities specified in paragraph (b).

(2) Without prejudice to sections 100 and 101, the Comptroller may require the owner, importer or exporter of the goods, or an agent of the owner, importer or exporter of the goods referred to in subsection (1) to -

- (a) produce and deliver to the customs officer or any other specified officer all books of account, invoice books, or other books, records or documents, whether or not in electronic form, in which any entry or memorandum appears or is likely to appear concerning the purchase, importation, exportation, manufacture, cost, valuation of, or payment for the goods within a period of seven years preceding the date of the notice;
- (b) allow the customs officer to make copies of, or take extracts from any of, the documents, books or records; and
- (c) answer any question concerning the documents, books, or records.

(3) A person who fails to comply with a request under this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

#### **156. Power to require copies of documents.**

Where a person is required to submit a report, entry or other form for the purpose of any customs enactment, the Comptroller may require that person to submit as many copies of the report, entry or other form as the Comptroller considers necessary.

#### **157. Further powers in relation to documents.**

(1) The Comptroller may, by written notice, require a person –

- (a) to produce for inspection by a proper officer documents or records which the Comptroller considers necessary or relevant to -
  - (i) an investigation under this Act,
  - (ii) an audit under this Act, or
  - (iii) the recovery of a debt due and payable to the State under this Act;
- (b) to allow a proper officer to take extracts from, or make copies of, documents or records of the kind referred to in paragraph (a); or
- (c) to appear before a proper officer and answer all questions put to the person concerning the goods, or transactions relating to the goods, which are—
  - (i) the subject of an investigation or audit under this Act, or
  - (ii) relevant to the recovery of the debt referred to in sub-paragraph (a)(iii).

(2) A person who fails to comply with a request made under subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) Where—

- (a) the Comptroller has reasonable cause to believe that documents or records referred to in subsection (1) are stored on a computer or other electronic device; and

- (b) a readable copy of the documents or records is not made available to the Comptroller,

the Comptroller may apply to a Magistrate for a warrant to allow the Comptroller to seize and retain the computer or other electronic device on which the documents or records are believed to be stored for as long as is reasonably necessary to copy such documents or records or obtain a readable copy of such documents or records.

#### **158. Copying of documents obtained during search.**

**(1) Where a customs officer—**

- (a) carries out any lawful search, inspection, audit or examination under this Act or any other customs enactment; and
- (b) has reasonable cause to believe that any document coming into his or her possession during such search, inspection, audit or examination is evidence of the commission of an offence against this Act or any other customs enactment,

the customs officer may remove the document for the purpose of making the necessary copies.

(2) Where any document is removed under subsection (1), the customs officer shall, as soon as practicable after the necessary copies of the document have been made, return the document to the person entitled to have possession of it.

**(3) Without prejudice to subsection (1), where a customs officer—**

- (a) carries out a lawful search, inspection, audit or examination under any customs enactment; and
- (b) has reasonable cause to believe that—
  - (i) an offence under a customs enactment has been committed or is about to be committed, or
  - (ii) evidence of an offence is to be found in information stored on a computer or other electronic device,

the customs officer may, subject to subsection (4), make a hard copy of the information or save a copy of the information in an electronic form.

(4) Where it is not possible for the customs officer to make a hard copy or to save a copy of the information in an electronic form, the customs officer may apply to a Magistrate for a warrant to allow the customs officer to seize and retain the computer or other electronic device on which the information is believed to be stored for as long as is reasonable to copy the information required.

(5) A copy of any document certified under the seal of the Customs Department is admissible in evidence in all courts or tribunals as if it were the original.

#### **159. Retention of documents and goods obtained during**

**search. (1) Where a customs officer—**

- (a) carries out any lawful search, inspection, audit or examination under this Act; and
- (b) has reasonable cause to believe that any documents or goods coming into his or her possession during the search, inspection, audit or examination—
  - (i) are evidence of the commission of an offence against this Act, or
  - (ii) are intended to be used for the purpose of committing any offence against this Act,

the customs officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) Where a customs officer takes possession of and retains—

- (a) a document under subsection (1), he or she shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified under the seal of the Customs Department as a true copy; or
- (b) any goods under this Act, he or she shall, as soon as reasonably practicable, supply the person otherwise entitled to the goods with a list of the goods which have been taken possession of and retained.

(3) Notwithstanding any other law, a copy of a document certified in accordance with subsection (2) is admissible in evidence in any court or tribunal as if such certified copy were the original document.

(4) Where a proper officer takes possession of and retains documents or goods under this section -

- (a) a court or tribunal may, in any proceedings for an offence relating to the documents or goods, order, at the hearing or on a subsequent application, that the documents or goods be –
  - (i) delivered to the person appearing to the court or tribunal to be entitled to them; or
  - (ii) otherwise disposed of in such manner and under such conditions as the court or tribunal thinks fit; and
- (b) the customs officer or an authorised person may—
  - (i) at any time, unless an order has been made under paragraph (a), return the documents or goods to the person from whom they were taken, or
  - (ii) apply to a Magistrate for an order respecting the disposal of the documents or goods.

(5) Where the customs officer or an authorised person makes an application under subsection (4)(b)(ii), the Magistrate may issue such order as a court or tribunal may issue under subsection(4)(a).

(6) If proceedings for an offence relating to the documents or goods retained under this section are not brought within a period of six months after the date on which the customs officer took possession of the document or goods, any person claiming to be entitled to such documents or goods may, after the expiration of that period, apply to a Magistrate for an order for the delivery of the documents or goods.

(7) The Magistrate may, on any application under subsection (6)–

- (a) refuse to issue the order; or
- (b) make such order as a court or tribunal may make under subsection (4)(a).

#### **160. Detention of goods suspected to be illegally obtained.**

(1) Where a customs officer or an authorised person has reasonable grounds to believe that goods were obtained in contravention of any law, the customs officer or authorised person may, without warrant, seize and detain such goods if the goods–

- (a) are in Saint Christopher and Nevis and the customs officer or authorised person is satisfied that the goods–
  - (i) are being exported or are intended to be exported, or
  - (ii) are being imported or have been imported; or
- (b) come to the attention or into the possession of the customs officer or authorised person, during a search, inspection, audit or examination under this Act or any enactment which relates to the reporting of imports or exports of currency.

(2) A customs officer may use reasonable force if it is necessary to seize or detain goods under this section.

(3) If the person from whom goods have been seized and detained under this section is identified but is not present when such seizure and detention occur, the Comptroller shall, as soon as practicable—

- (a) notify that person of the detention and seizure of the goods; and
- (b) issue to that person a receipt in respect of the seized and detained goods.

(4) Subject to section 163, the customs officer or authorised person shall—

- (a) take any goods detained under this section; or
- (b) cause any goods detained under this section to be taken,

to a secure place for safekeeping as directed by the customs officer or authorised person.

#### **161. Return of goods detained under section 160**

(1) The Comptroller shall return goods seized and detained under section 160, or cause such goods to be returned, to the person from whom the goods were seized and detained as soon as practicable after –

- (a) the completion of all relevant investigations, if it is shown that the goods are not tainted property; or

(b) the expiration of the investigation period, if sooner.

(2) Notwithstanding subsection (1), where, on or before the expiration of an investigation period—

(a) an information relating to goods which were seized and detained under subsection (1) is laid before a Magistrate; or

(b) any other country makes a request to the Attorney- General under any agreement relating to mutual legal assistance in relation to such goods,

the Comptroller may continue to detain such goods until the determination of the relevant proceedings or request, including any resulting applications.

(3) In this section, “investigation period”, in relation to goods seized and detained under section 160, means the period of three months after the date on which the goods were seized and detained including any extension of that period granted by the court.

**162. Extension of three-month period in section 161.**

(1) Subject to subsection (2), where the Comptroller is of the opinion that an extension of the three-month period is necessary to allow for the completion of investigations in or outside Saint Christopher and Nevis in relation to the goods, the Comptroller may, in writing before the expiration of the three-month period referred to in section 161(1)(a), apply to the court for an extension of time.

(2) The application for an extension of time—

(a) shall include—

(i) a description of the goods seized and detained,

(ii) the date on which the detention commenced,

(iii) a statement of the facts supporting the reasonable grounds required under section 160, and

(iv) the reasons for the extension of time; and

(b) shall be served on the person from whom the goods were seized, if that person can be identified and located.

(3) The person from whom the goods were seized is entitled to appear and be heard on the application for extension of time.

(4) The Comptroller shall make all reasonable efforts to notify the person from whom the goods were seized, at least twenty four hours before the hearing of the application, of the time and place of that hearing.

(5) Where the court is satisfied that -

(a) there is reasonable cause to believe that the goods were obtained in contravention of any law; and

(b) the extension of time is necessary,

the court may, by order, extend the three-month period for a reasonable period of not more than thirty days, but the court shall only make one such extension in respect of the same investigation.

**163. Custody of certain things detained under section 160.**

(1) Where an item seized and detained under section 160 is a vessel, an aircraft, a vehicle, or an animal, a customs officer may leave the item in the custody of -

- (a) the person from whom the item has been seized and detained; or
- (b) any other person authorised by the customs officer who consents to having custody of such item.

(2) A person who has the custody of an item under subsection (1) shall, until a final decision is made under section 161 respecting the return of the item, hold such item—

- (a) in safekeeping, without charge to the State; and
- (b) in accordance with such reasonable conditions as the Comptroller may impose.

(3) A person to whom subsection (2) applies -

- (a) shall make the item available to the customs officer on request;
- (b) shall not alter or dispose of the item or remove the item from Saint Christopher and Nevis, unless authorised to do so by the customs officer; and
- (c) shall, on demand, return the item to the custody of the Comptroller.

(4) Any person who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or equivalent to three times the value of the goods whichever is greater.

**164. Use of aids by customs officers**

(1) In exercising any power under this Act to board a conveyance, enter a building or search any premises, a customs officer or a police officer may bring with him or her and use as an aid -

- (a) a dog or a chemical substance; or
- (b) an x-ray or imaging equipment, or any other mechanical, electrical or electronic device.

(2) This section does not apply to a search carried out on residential premises except in the execution of a warrant issued under section 123.

**165. Conditions applying to entry of buildings**

Every provision of this Act which confers on a customs officer the power to enter any building, whether under the authority of a warrant or otherwise, is subject to—

- (a) reasonable notice of the intention to enter being given, except where such notice is likely to frustrate the purpose of the entry;

- (b) entry being made at a time which is reasonable, taking into account the circumstances so as to avoid frustrating the purpose of the entry;
- (c) identification being produced on initial entry and, if requested, at any subsequent time; and
- (d) the authority for the entry and the purpose of the entry being clearly stated to the owner or occupier of the building, if present.

#### **166. Detention of dangerous goods**

(1) A customs officer may detain goods found in the course of exercising any power of search or examination concerning aircraft if the officer has a reasonable belief that the goods are—

- (a) dangerous goods which may not be lawfully carried on an aircraft; and
- (b) intended to be carried on the aircraft.

(2) Where a customs officer detains any goods under subsection (1), he or she shall, as soon as practicable, deliver such goods into the custody of—

- (a) the Competent Authority; or
- (b) the operator of the aircraft.

(3) Where goods have been delivered under subsection (2), responsibility for such goods passes from the Comptroller to the person having custody of the goods.

#### **167. Protection of persons acting under authority of Act.**

(1) Subject to subsection (2)—

- (a) a customs officer or a member of the disciplined force; or
- (b) a person assisting a customs officer or a member of the disciplined force,

shall not be liable for the loss of or damage to any document, goods, vehicle, vessel or aircraft caused by the action or omission of such officer, member or person lawfully exercising any power conferred under this Act.

(2) Subsection (1) does not apply where the person in question has not acted in good faith or has acted without reasonable care.

#### **168. Comptroller may prescribe forms.**

(1) Subject to this Act, the Comptroller—

- (a) may, by Regulations, prescribe forms required to be used for the purposes of implementing this Act any other customs enactment; and
- (b) shall cause forms prescribed under paragraph (a) to be published in the Gazette one month before the forms are required to be used.

(2) Importers and exporters shall use the appropriate forms.

(3) Every document submitted to the Comptroller or a customs officer for the purposes of this Act or any other customs enactment—

- (a) shall be in the prescribed form; and
- (b) shall contain such particulars as the Comptroller may prescribe.

(4) Unless otherwise required by the Comptroller, any document submitted under this section may be in written or electronic form and that document shall serve as a legal document.

#### **169. Errors in documents.**

(1) A person who submits a document to the Comptroller under section 38 or 50 shall ensure that the information given in that document is correct.

(2) Where in relation to—

- (a) the classification of goods;
- (b) the description of goods;
- (c) the value of goods;
- (d) the customs procedure code; or
- (e) any other material respect,

a proper officer discovers that an error has been made in a document submitted in accordance with section 38 or 50, the Comptroller may, subject to subsection (3), impose on the person submitting the inaccurate document such fixed penalty as the Minister may prescribe in regulations.

(3) Where the Comptroller determines that an error in a document is a clerical error or a mistake of fact or negligence not constituting a pattern of negligence, the Comptroller shall not impose any penalty.

#### **170. Witnessing of signatures. Where—**

- (a) a document or declaration, whether in electronic form or otherwise, is required by a customs enactment to be signed in the presence of the Comptroller or any particular officer; and
- (b) the document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Comptroller or the officer who receives such document or declaration,

the document or declaration is valid as if it had been signed in the presence of the Comptroller or the officer in whose presence it is required to be signed.

#### **171. Documents in foreign language.**

Where a person presents to a customs officer a document, in a foreign language, in relation to the carrying out of any duty or the exercise of any power under this Act or any other enactment, the customs officer may require the presenter of the document to supply to the customs officer, at the presenter's own expense, a translation of the document in the English language prepared by a person approved by the Comptroller of Customs.