

CHAPTER 147

THE EXCISE (MANAGEMENT AND TARIFF) ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 147

THE EXCISE (MANAGEMENT AND TARIFF) ACT

An Act to make provision for the control of the manufacture of excisable goods, the denaturing of spirits, for the collection of excise duties and for related and connected matters.

[1st November, 1954]

Ords Nos.

13 of 1952

5 of 1959

1 of 1961

15 of 1961

Acts Nos.

3 of 1963

12 of 1963

1 of 1965

12 of 1969

14 of 1969

4 of 1970

12 of 1970

L.N. 53/1954

L.N. 84/1961

L.N. 1/1967

(E.A.C.) Acts Nos.

19 of 1977

8 of 1998

12 of 1999

14 of 2001

18 of 2002

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh147s1]1. Short title

This Act may be cited as the Excise (Management and Tariff) Act.

[PCh147s2]2. Interpretation

(1) In this Act, except where the context otherwise requires—

"aircraft" includes every description of craft used in aerial navigation;

"appropriate Partner State legislation" means any legislation of any of the Partner States imposing any rate of excise duty on the manufacture in that Partner State of any excisable goods;

"approved" means approved by the Commissioner-General;

"beer" includes ale, porter, and any other description of beer and any liquor which is made or sold as a description of, or substitute for, beer and which contains more than two per centum of proof spirit but does not include—

(a) in the case of Kenya, African intoxicating liquor as defined in the African Liquor Act * of Kenya; or

(b) in the case of Tanzania, local liquor as defined in the Intoxicating Liquors Act *; or

(c) in the case of Uganda, native liquor as defined in the Liquor Act * of Uganda; or

(d) any kind of beer which the Authority may by order exclude from the provisions of this Act;

"bonded warehouse" means any warehouse licensed by the Commissioner-General under the East African Customs and Transfer Tax Management Act * for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused;

"brewer" means the holder of a valid licence to brew beer;

"by authority" means by the authority of the Commissioner-General or of any officer doing his duty in the matter in relation to which the expression is used;

"cigar" means a cigar, cheroot or cigarillo, prepared from tobacco;

"cigarette" means a cigarette prepared from tobacco and includes any form of tip, and the paper of the cigarette;

"Commissioner-General" means the person for the time being having charge of the East African Customs and Excise Department and includes a Commissioner of Customs;

"compounded spirits" means spirits which have been distinctly altered in character by redistillation with, or by the addition of, flavouring matter or other material or ingredient; and "to compound" means to prepare compounded spirits;

"days" does not include Saturdays, Sundays or public holidays;

"denaturer" means a person holding a valid licence to denature spirits under this Act; and "to denature" means to render unfit for human consumption;

"dissolving" means dissolving of materials for making any priming or colouring solution;

"distiller" means a person holding a valid licence to manufacture spirits under this Act by distillation of a fermented liquor or enguli or by any other process; and "distillery" means the distiller's factory;

"distiller's warehouse" means a place of security provided by a distiller and approved by the Commissioner-General under section 25;

"duty" includes any imposition, tax or surtax, imposed by any excise law;

"enguli" means any spirituous liquor of the type known as enguli, including any drink containing such liquor, which is conveyed into a receiver in a distillery entered under this Act as an enguli receiver;

"excisable goods" means any goods manufactured in any of the Partner States and on the manufacture of which an excise duty is imposed in that Partner State;

"Excise" or "the Excise" means the East African Customs and Excise Department;

"excise duty" means any duty of excise imposed under section 124 of this Act;

"excise laws" includes this Act and any enactment relating to the Excise or to the manufacture of any excisable goods, and any subsidiary legislation made under the authority of this Act or any such enactment;

"excise revenue" means any amounts collectible by the Excise in accordance with the provisions of the excise laws;

"export" means to take or cause to be taken out of the Partner States;

"factory" means any premises on which a person is licensed to—

(a) manufacture and store excisable goods;

(b) use excisable goods in any other manufactures of other goods;

"feints" means spirits conveyed into a receiver in a distillery entered under this Act as a feints receiver;

"licence" means a valid licence issued under this Act;

"low wines" means spirits of the first extraction conveyed into a receiver in a distillery entered under this Act as a low wines receiver;

"manufacture" includes—

(a) the production of excisable goods;

(b) any intermediate or uncompleted process in the production of excisable goods;

(c) the rectifying or denaturing of spirits; or

"manufactured tobacco" means tobacco made up—

(a) ready for smoking in a pipe; or

(b) ready for use in the making of cigarettes or cigars; or

(c) in the form of cake, plug, roll, or stick;

(d) in the form of snuff;

"materials" means any goods from which excisable goods are capable of being manufactured and any residue from any process of manufacture;

"master" includes any person for the time being having or taking charge or command of any aircraft or vessel;

"methylated spirits" means spirits denatured in accordance with a formula prescribed by regulations made under this Act for methylated spirits;

"night" means the period between six o'clock in the afternoon of any day and six o'clock in the forenoon of the following day;

"officer" includes any person other than a labourer employed in the service of the Excise or for the time being performing duties in relation to the Excise;

"owner" in respect of any excisable goods, materials, aircraft, vessel, vehicle, plant or other thing, includes any person, other than an officer acting in his official capacity being or holding himself out to be the owner, manufacturer, agent, or the person in possession of or beneficially interested in or having control of or having power of disposition over, such goods, materials, aircraft, vessel, vehicle, plant or other thing;

"plant" includes utensils, presses, machinery, mills, implements, appliances and fittings;

"premises" includes any building, house, room or place;

"proper officer" means any officer whose right or duty is to require the performance of or to perform, the act referred to;

"rectifier" means a person holding a valid licence to rectify spirits under this Act and "to rectify" means to redistill spirits removed from a spirits receiver for the purpose of purifying or adding flavour but does not include the redistillation of enguli;

"rectifier's warehouse" means a place of security provided by a rectifier and approved by the Commissioner-General under section 25;

"regulations" means any regulations made under this Act;

"specially denatured spirits" means spirits denatured in accordance with a formula prescribed by regulations relating to specially denatured spirits;

"spirits" means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits or enguli and in the case of Tanzania, local liquor as defined in the Intoxicating Liquor Act * ;

"still" includes any part of a still;

"sugar" includes—

- (a) any saccharine substance, extract or syrup;
- (b) rice;
- (c) flaked maize and any other description of corn which in the opinion of the Commissioner-General is prepared in a manner similar to flaked maize;
- (d) any other material capable of being used in brewing except malt, corn, hops, hop concentrate or hop oil;

"tons register" means the tons of a ship's net tonnage as ascertained and registered according to the tonnage regulations of the Merchant Shipping Act * or in the case of a ship which is not registered under that Act, ascertained in like manner as if it were to be so registered;

"utensil" includes any container, tank, storage bin, receptacle or vat;

"vehicle" includes every description of conveyance for the transport by land of human beings, animals or property;

"wash" means the fermented liquor from which spirits are produced by distillation;

"wine" means liquor of a strength not exceeding 50 degrees of proof which is made from fruit and sugar or from fruit or sugar mixed with any other material and which has undergone a process of fermentation in the manufacture thereof and includes mead;

"worts" means the liquid obtained by dissolving sugar or molasses in water or by extracting the soluble portion of malt or corn in the process of brewing and any priming or colouring solution.

(2) For the purposes of this Act—

(a) [Repealed by section 7(c) of Act No. 19 of 1977];

(b) every act matter or thing required or authorised by this Act to be done or performed by, with, to or before, the Commissioner-General, if done or performed by, with, to or before, any officer appointed by the Commissioner-General for such purpose, shall be deemed to be done or performed by, with, to or before, the Commissioner-General;

(c) every person employed on any duty or service relating to the Excise by order or with the concurrence of, the Commissioner-General, shall be deemed to be the proper officer for that duty or service and, every act required by law at any time to be done by, with, to or before, any particular officer nominated for such purpose, if done by, with, to or before any person appointed by the Commissioner-General to act for such particular officer, shall be deemed to be done by, with, to or before, such particular officer.

PART II

ADMINISTRATION (ss 3-7)

[PCh147s3]3. Provisions relating to staff Act No. 3 of 1963; L.N. 1/1967

(1) [Repealed by Act No. 19 of 1977 s. 7(d).]

(2) Every officer shall, for the purposes of the Penal Code * of any of the Partner States, be deemed to be a person employed in the public service of that Partner State.

(3) The Commissioner-General may authorise any officer to exercise any of the powers conferred by this Act upon the Commissioner-General subject to such limitations as the Commissioner-General may think fit.

(4) Every officer shall be liable to serve in any place in the Partner States and shall perform such duties as may be required of him by the Commissioner-General.

(5) Every officer who is appointed to any permanent office or employment in the Excise shall upon appointment, make and subscribe before a magistrate or commissioner for oaths, a declaration in the form set out in the First Schedule.

[PCh147s4]4. Excise seal and flag

(1) There shall be a seal of the Excise which shall be officially and judicially noticed.

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

[PCh147s5]5. Officer to have powers of police officer

For the purpose of carrying out the provisions of this Act, every officer shall, in the performance of his duty, have all the powers, rights, privileges and protection, of a

police officer of the Partner State in which such officer so performs his duty.

[PCh147s6]6. Hours of attendance

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

(2) Where any person desires the attendance of any officer at a time outside the hours of general attendance, such person shall make request on the prescribed form to the proper officer at the place where such attendance is desired; and, subject to any regulations and to the payment of the prescribed fees, the grant of such request shall not be unreasonably refused by the proper officer 1.

[PCh147s7]7. Offences by, or in relation to, officers Act No. 3 of 1963

(1) Any officer who—

(a) directly or indirectly asks for or takes, in connection with any of his duties, any payment or other reward whether pecuniary or otherwise or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the excise revenue is or may be defrauded, or which is contrary to the provisions of the excise laws or the proper execution of his duty; or

(c) discloses, except for the purposes of this Act or when required to do so as a witness in any court or with the approval of the Authority, any information acquired by him in the performance of his duties relating to any person, firm or business of any kind, shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(2) Any person who—

(a) directly or indirectly offers or gives to any officer any payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

(b) proposes or enters into any agreement with any officer, in order to induce that officer to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the excise revenue is or may be defrauded or which is contrary to the provisions of the excise laws or the proper execution of the duty of such officer, shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years, or to both such.

PART III

MANUFACTURE OF EXCISABLE GOODS (ss 8-15)

[PCh147s8]8. Licence required to manufacture excisable goods

(1) No person shall manufacture any excisable goods unless he is licensed by the Licensing Authority in accordance with this Act.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding

ten thousand shillings or to both and any plant, excisable goods and materials, in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s9]9. Licensing Authority Act No. 3 of 1963

For the purposes of this Act the Licensing Authority in respect of each Partner State shall be such authority as may be designated for this purpose by resolution of the National Assembly of that Partner State:

Provided that until any such authority is so designated, that authority shall be deemed to be the President of the Partner State.

[PCh147s10]10. Application for and grant of licence

(1) Subject to this Act, the Licensing Authority may, upon application, grant a licence to any person to manufacture any excisable goods; and the Licensing Authority may, without assigning any reason, refuse to grant any such licence.

(2) A separate application shall be required in respect of—

- (a) each factory in which excisable goods are to be manufactured;
- (b) each class of excisable goods to be manufactured.

(3) Every application for a licence shall be made to the Commissioner-General in the prescribed form and the Commissioner-General shall forward such application to the Licensing Authority with his recommendations.

(4) Where the Licensing Authority has granted any licence, then the Commissioner-General, acting on behalf of the Licensing Authority, shall, on payment of the prescribed fee, issue the licence in the prescribed form and such licence shall expire on the 31st December in each year; and the Commissioner-General shall, unless otherwise

directed by the Licensing Authority, on application and on payment of the prescribed fee, issue a renewal of such licence for the next ensuing year to the licensee.

(5) Every licence shall be issued to a particular person and shall be in respect of the factory and class of excisable goods specified in the licence and—

(a) a factory in respect of which a licence has been issued under this Act shall not be used—

(i) except for the manufacture of the excisable goods specified in the licence;

(ii) for the manufacture of more than one class of excisable goods:

Provided that for the purposes of this paragraph cigarettes, cigars and manufactured tobacco, shall be regarded as one class of excisable goods; and

(b) no person other than the licensee shall manufacture any goods, whether excisable or not, in such factory.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both; and any plant, excisable goods, and materials in respect of which such offence has been committed shall be liable to forfeiture.

[PCh147s11]11. Transfer of licence

(1) Any licensee may apply to the Licensing Authority—

(a) to transfer his licence to any other person and in any such case such other person shall be joined in such application;

- (b) to transfer his factory to any other place; and
- (c) to manufacture another class of excisable goods in his factory upon ceasing to manufacture in such factory the class of excisable goods specified in the licence,

and the Licensing Authority may, without assigning any reason, refuse to grant any such application.

(2) Every application under this section shall be made to the Commissioner-General on the prescribed form and the Commissioner-General shall forward such application to the Licensing Authority with his recommendations.

(3) Where the Licensing Authority has granted any application under this section, then the Commissioner-General shall, upon surrender of the existing licence and on payment of the prescribed fee, if any, make the necessary endorsement on the licence or issue a fresh licence, as the Commissioner-General may think most convenient.

[PCh147s12]12. Power to revoke licence

(1) The Licensing Authority may revoke or suspend or direct the Commissioner-General not to renew, any licence where it is satisfied that—

- (a) the licensee has been guilty of any offence under this Act;
- (b) the licensee has been convicted of any offence involving dishonesty or fraud;
- (c) the licensee has become a bankrupt or has entered into any arrangement or composition with or for the benefit of his creditors;
- (d) the factory or the plant in the factory is of such a nature or so is maintained that, the excisable goods manufactured are likely to be adversely affected; and

(e) the factory is so designed, equipped or sited, as to render difficult the supervision of the factory for excise purposes.

(2) Where the Licensing Authority revoked or suspends, or directs the Commissioner-General not to renew, any licence under this section, then notice of that fact shall immediately be given to the licensee by the Commissioner-General.

[PCh147s13]13. Effect of revocation of licence

(1) Where any licence has been revoked or suspended or has expired, then the licensee shall—

(a) immediately cease to manufacture the excisable goods referred to in the licence;

(b) immediately pay duty on the excisable goods manufactured under such licence;

(c) not dispose of any materials in the factory to which such licence relates, except in accordance with such conditions as the Commissioner-General may impose.

(2) Any person who contravenes this section or any conditions imposed by the Commissioner-General under this section, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both and any plant, excisable goods and materials, in respect of which such offence has been committed shall be liable to forfeiture.

[PCh147s14]14. Provision of facilities for excise control

(1) The Commissioner-General may, for the purpose of ensuring proper excise control, require a licensee to provide and maintain, to the satisfaction of the

Commissioner-General and at a rental to be approved by the Commissioner-General suitable housing accommodation for the officer assigned to the duty of excise control of a factory.

(2) The Commissioner-General may, for the purpose of ensuring proper excise control, require a licensee to provide and maintain, to the satisfaction of the Commissioner-General, suitable office accommodation and equipment in a factory for the officer assigned to the duty of excise control of such factory.

(3) Every licensee shall provide and maintain at his factory all such just scales and weights, lights, ladders, and other equipment, as may be necessary in order to enable the proper officer to take account of, or check by weight, gauge or measure, all excisable goods or materials in such factory.

(4) Where any licensee fails to comply to the satisfaction of the Commissioner-General with any requirement made by the Commissioner-General under subsections (1) or (2), then the Licensing Authority may revoke or suspend or direct the Commissioner-General not to renew, the licence of such licensee.

[PCh147s15]15. Licensee to keep books

(1) Every licensee shall keep at his factory and in the prescribed manner, all such records as may be required under the provisions of the excise laws and, shall make in the records, the prescribed entries relating to the manufacture, storage and delivery, of excisable goods and materials and every such entry shall be made legibly in ink and, subject to section 20, shall not be altered in any manner other than by cancellation, by drawing a single line in ink through the incorrect entry so as to allow the original entry to

remain legible or by amendment, by drawing a single line through the incorrect entry and making a correcting entry above the entry cancelled.

(2) Every licensee shall render, in the prescribed manner and at the prescribed times, such returns as may be required in accordance with the provisions of the excise laws.

(3) All records required to be kept under the provisions of the excise laws shall at all times be available for inspection by the proper officer and such officer may take copies of any entry in such records.

(4) Any licensee who contravenes subsection (1) shall be guilty of an offence.

PART IV

DENATURING OF SPIRITS (ss 16-17)

[PCh147s16]16. Licence required to denature spirits Ord. No. 5 of 1959

(1) No person shall denature spirits for sale as denatured spirits unless he is licensed by the Licensing Authority in accordance with this Act.

(2) No spirits shall be denatured for sale as denatured spirits except in accordance with a formula prescribed by regulations made under this Act for either methylated spirits or specially denatured spirits.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both; and any plant, spirits and materials in respect of which such offence has been committed shall be liable to forfeiture.

[PCh147s17]17. Application of Part III and sections 18 and 19 to the denaturing of spirits Ord. No. 5 of 1959

Part III and sections 18 and 19 of this Act shall apply to the denaturing of spirits as they do to the manufacture of excisable goods:

Provided that nothing in subsection (5) of section 10 shall preclude a distiller licensed to denature spirits, from denaturing distillery spirits manufactured by him.

PART V

CONTROL OF MANUFACTURE (ss 18-34)

Entry of Premises and Plant (ss 18-19)

[PCh147s18]18. Entry

(1) Every licensee shall, before commencing manufacture, make entry in the prescribed form and in the prescribed manner of each building, room, place and item of plant, in the factory which he proposes to use in the manufacture, preparation for sale or storage, of materials or excisable goods and, in each such entry, he shall specify the purpose for which each such building, room, place or item of plant, is to be used and, unless the Commissioner-General otherwise allows, the mark by which it is to be distinguished.

(2) Where a licensee is a body corporate, then such entry shall be made under the seal of the body corporate and the signature of any principal officer authorised by the constitution of such body corporate to authenticate such seal or, by any agent duly authorised under such seal and signature.

(3) The Commissioner-General may, at any time by notice in writing to the licensee, require new entry to be made by the licensee within one month of the date of such notice and, as from the expiration of such period, the existing entry shall be deemed to be void and of no effect.

(4) A licensee shall not, in the course of the manufacture, preparation for sale or storage, of any materials or excisable goods—

(a) make use of any building, room, place or item of plant, in relation to which entry is required under this section unless there is in force in respect of the same, a valid entry;

(b) make use of any such building, room, place or item of plant, for any purpose other than that for which it was entered; and

(c) effect, without the prior permission of the proper officer, any alteration in shape, position or capacity, to any such building, room, place or item of plant.

(5) Any licensee who contravenes subsection (1) or subsection (4) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both; and any plant, excisable goods and materials, in respect of which such offence has been committed shall be liable to forfeiture.

[PCh147s19]19. Rooms and plant to be marked

(1) Unless the Commissioner-General otherwise allows, every licensee shall cause to be painted and maintained legibly and in oil colours, on the outside of the door of every room and on every item of plant required to be entered in accordance with the provisions of this Act, the name of such room or item of plant, according to the purpose for which it

was so entered and where more than one such room or item of plant is to be used for the same purpose, then each such room or item of plant, as the case may be, shall in addition be marked with progressive numbers.

(2) Any licensee who contravenes any of the provisions of this section shall be guilty of an offence.

Provisions relating to Manufacture of Beer (ss 20-23)

[PCh147s20]20. Provisions relating to brewing book Act No. 14 of 1969

(1) The proper officer shall deliver a book in the prescribed form, to be known as the brewing book, to every brewer and each such brewer shall keep such book in the factory and make available at all time for inspection by the proper officer who may take copies of any entry in the brewing book.

(2) Every brewer shall—

(a) at least two hours before he commences to mash any malt or corn, or to dissolve any sugar, enter in the brewing book, the day and hour of the next brewing;

(b) at least two hours before the time so entered for the next brewing enter in the brewing book the separate quantities of the malt, corn, sugar and other materials, which he proposes to use in such next brewing;

(c) at least two hours before the time so entered for the next brewing, enter in the brewing book the time when all the worts are to be drawn off the grains in the mash tun; and

(d) within one hour of the worts being collected or, if they are not collected before nine o'clock in the afternoon, before nine o'clock in the forenoon of the following

day, enter in the brewing book the particulars of the quantity and gravity of such worts and the description and number of each vessel, into which the worts have been collected and, where fermentation has commenced in any worts before such entry of the quantity and gravity has been made, then the true original gravity before fermentation shall be entered.

(3) Every brewer shall, when making any entry in accordance with the provisions of subsection (2), enter the date and hour on which such entry is made and, no entry in the brewing book shall be cancelled, obliterated, or in any way altered.

(4) Any brewer who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings, or to both and any excisable goods and materials in respect of which such offence has been committed shall be liable to forfeiture.

[PCh147s21]21. Notice of brewing may be required

Every brewer shall, if so required by the proper officer, give notice in writing containing the prescribed particulars to the proper officer, at least forty-eight hours before the time when the brewer proposes to make the next brewing.

[PCh147s22]22. Provisions relating to brewing Act No. 14 of 1969

(1) All worts shall be removed successively and in the customary order of brewing from the mash tun to the underback, coppers, coolers and collecting and fermenting vessels or if these are separate vessels, from the collecting vessels within the premises where the brewing commenced.

(2) Any brewer who contravenes this section shall be guilty of an offence and any excisable goods and materials in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s23]23. False declaration of original gravity of beer Act No. 14 of 1969

(1) Before bottling, packing or removing any beer to any other brewery or licensed premises, the brewer shall declare, in such form as the proper officer may require, the original gravity of that beer.

(2) Any brewer who makes a declaration under this section knowing or having reason to believe the same to be false, shall be guilty of an offence.

(3) In this section "original gravity" shall have the meaning assigned to it under section 45 subsection (2).

Provisions relating to the Manufacture of Spirits (ss 24-29)

[PCh147s24]24. Licensing Authority may direct Act and Regulations not to apply
Ord. No. 5 of 1959

(1) Where the Licensing Authority—

(a) is satisfied that any process of manufacture carried on by any person involving the manufacture of spirits, is primarily directed to the production of an article other than spirits; or

(b) sees fit, in the case of any person manufacturing spirits by a process other than distillation of a fermented liquor,

the Licensing Authority may direct that, subject to compliance with such conditions as it may impose, such provisions of this Act or of any regulations as may be specified in the direction, shall not apply in the case of that person.

(2) If any person in whose case a direction has been given by the Licensing Authority under this section, acts in contravention of or, fails to comply with any conditions imposed by the direction, such person shall be guilty of an offence and any plant, spirits and materials in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s25]25. Distiller's and rectifier's warehouse Ords. Nos. 5 of 1959; 1 of 1961

(1) A distiller may provide in association with his distillery, a place of security known as a distiller's warehouse for the deposit of spirits manufactured at that distillery and, if such place is approved by the Commissioner-General and it is included in the distiller's entry of premises, the distiller may deposit in such warehouse without payment of duty, any spirits so manufactured.

(2) A rectifier may provide within his factory premises, a place of security known as a rectifier's warehouse for the deposit of spirits removed from a distillery or distiller's warehouse, for the purpose of rectification and compounding by the rectifier at such factory and, if such place is approved by the Commissioner-General and it is included in the rectifier's entry of premises, the rectifier may deposit in such warehouse without payment of duty any spirits so removed from a distillery or distiller's warehouse.

(3) If in the case of a distiller's warehouse the place of security provided is outside the distiller's distillery, the Commissioner-General may attach to his approval such

conditions as he may see fit and, if those conditions are not for the time being observed, that place shall be deemed not to have been approved by the Commissioner-General.

(4) A distiller's warehouse, wherever situated or, a rectifier's warehouse, shall, for the purpose of section 14, be deemed to be part of the distiller's distillery or the rectifier's factory, as the case may be.

[PCh147s26]26. Restriction on delivery of immature spirits for home use Ords. Nos. 5 of 1959; 1 of 1961; 15 of 1961; Act No. 1 of 1965

(1) No spirits shall be delivered from a distillery or a distiller's warehouse, unless they have been warehoused for a period of at least three years:

Provided that this section shall not apply to—

- (a) spirits delivered for rectification;
- (b) spirits delivered for denaturing;
- (c) spirits delivered for exportation;
- (d) spirits delivered without payment of duty under section 64;
- (e) spirits distilled at a strength of not less than sixty degrees over proof delivered to a wine manufacturer for the fortification of wine; and
- (f) spirits distilled at a strength of not less than sixty degrees over proof delivered for compounding.

(2) Any person who delivers or procures or attempts to procure the delivery of spirits in contravention of this section shall be guilty of an offence and, any spirits the

delivery of which has been procured by such offence, shall be liable to forfeiture.

[PCh147s27]27. Restriction on other trades by distiller, rectifier or denaturer Ord.
No. 5 of 1959

(1) Except with the written permission of the Commissioner-General and subject to such conditions as he may impose, a distiller rectifier or denaturer shall not carry on within his factory any trade other than that of a distiller, rectifier or denaturer, or carry on any other trade on any premises communicating otherwise than by a public roadway with his factory.

(2) Any person who contravenes this section or any conditions imposed by the Commissioner-General under subsection (1) shall be guilty of an offence.

[PCh147s28]28. Keeping or using of still otherwise than by distiller or rectifier prohibited Ord. No. 5 of 1959

(1) Subject to this section, no person other than a distiller or rectifier shall keep or use a still.

(2) The Commissioner-General may permit, subject to such conditions as he may impose, the keeping and use of a still by a person other than a distiller or rectifier where the still is—

- (a) kept by a person who makes or keeps stills solely for the purpose of sale;
- or
- (b) kept or used for experimental, analytical or scientific purposes; or
- (c) kept or used for the manufacture of any article other than spirits.

(3) Any person who, not being a distiller or rectifier or who is not permitted by the Commissioner-General, keeps or uses a still shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both and the still shall be liable to forfeiture.

[PCh147s29]29. Deposit of rectified or compounded spirits in bonded warehouse
Ord. No. 1 of 1961

(1) Spirits which have been rectified or compounded by a rectifier may be deposited in a bonded warehouse in such quantities and under such conditions as the Commissioner-General may determine for exportation or for shipment for use as stores for any aircraft or vessel.

(2) No rectified or compounded spirits referred to in subsection (1) may be delivered from a bounded warehouse for home use, except save with the written permission of the Commissioner-General and subject to such conditions as he may impose.
Provisions relating to Manufacture of Excisable Goods other than Beer and Spirits (ss 30-34)

[PCh147s30]30. Storage of excisable goods after manufacture Ord. No. 5 of 1959

(1) All excisable goods, other than beer and spirits, shall, after the process of manufacture has been completed, be immediately removed to a room, which shall be known as the stock room, of which entry has been made in accordance with this Act, and such goods shall be kept in the stock room until delivery is made in accordance with the provisions of the excise laws.

(2) The stock room shall not be used for any purpose other than that of storing the excisable goods after they have been manufactured.

(3) All excisable goods in the stock room shall be stored in such manner as to facilitate the taking of a full account of all the goods.

(4) Any licensee who contravenes this section shall be guilty of an offence and any excisable goods in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s31]31. Stock book and returns Ord. No. 5 of 1959

(1) Every licensee, other than a brewer or distiller, shall keep a stock book in the prescribed form and shall each day enter in the stock book, the particulars of all excisable goods received in and delivered from, the stock room and such stock book shall at all time be available for inspection by the proper officer who may take copies of any entry in the stock book.

(2) The licensee referred to in subsection (1), shall transmit to the Commissioner-General on or before the twenty-first day of each month, a transcript in duplicate of the stock book showing all transactions entered during the previous month.

(3) Any licensee who contravenes this section shall be guilty of an offence and any excisable goods in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s32]32. Deficiency or excess in stock of licensee Ords. Nos. 5 of 1959; 1 of 1961

(1) Where, upon the proper officer taking stock in the factory of any licensee, other than a brewer, distiller, denature or rectifier—

(a) such licensee fails to account to such proper officer for any excisable goods manufactured by the licensee the duty on all such excisable goods shall become due and notwithstanding section 53, be paid immediately; and

(b) any excisable goods are found in excess of the quantity entered in the stock books of the licensee, such goods shall be liable to forfeiture.

(2) Any licensee other than a brewer, distiller, denaturer or rectifier—

(a) who fails to account to the proper officer for any excisable goods manufactured by the licensee; or

(b) in whose factory any excisable goods are found in excess of the quantity in the stock books,

shall, unless the licensee explains such deficiency or excess, as the case may be, to the satisfaction of the proper officer, be guilty of an offence.

[PCh147s33]33. Manufacture of tobacco

(1) Every tobacco licensee shall, if the Commissioner-General by notice in writing so requires, keep and enter in, an operations account in the prescribed form, particulars of—

(a) all unmanufactured tobacco received at the factory for manufacture; and

(b) all manufactured tobacco, cigarettes and cigars, delivered to the stock room.

(2) Every tobacco licensee shall, at the end of each month, balance such operations account so as to show—

- (a) the loss of weight in tobacco during the process of manufacture; and
- (b) an analysis of the weight of the various brands of tobacco, cigarettes and cigars manufactured during that month.

(3) A tobacco licensee shall not, except with the permission of the Commissioner-General and subject to such conditions as he may impose, sell or otherwise dispose of any tobacco which is not liable to duty.

(4) For the purposes of this section, the expression "tobacco licensee" means any person licensed to manufacture tobacco, cigarettes or cigars.

(5) Any tobacco licensee who contravenes this section or any condition imposed by the Commissioner-General in accordance with this section, shall be guilty of an offence and any excisable goods and materials in respect of which such offence has been committed, shall be liable to forfeiture.

[PCh147s34]34. Fortification and mixing of wine Ord. No. 15 of 1961; 12 of 1969

(1) Subject to such conditions and limitations as may be prescribed, a wine manufacturer may mix in his factory, duty free spirits with wine manufactured by him in a proportion not exceeding ten litres of proof spirits to one hundred litres of wine, so that the mixture shall not be raised to a greater strength than fifty degrees of proof.

(2) Subject to such conditions and limitations as may be prescribed, a wine manufacturer may, during the process of manufacture in his factory, mix with wine made by him, imported wine on which the full duties of customs have been paid.

PART VI

PROVISIONS RELATING TO SECURITIES (ss 35-38)

[PCh147s35]35. Commissioner-General may require security

The Commissioner-General may require any person to give security for the due compliance by that person with the provisions of this Act and generally, for the protection of the excise revenue and pending the giving of any such security, the Commissioner-General may refuse to issue any licence.

[PCh147s36]36. General provisions relating to giving of security Act No. 1 of 1965

(1) Where any security is required to be given under this Act, such security may be given to the satisfaction of the Commissioner-General either—

(a) by bond in such sum and subject to such conditions and with such sureties as the Commissioner-General may reasonably require; or

(b) by cash deposit; or

(c) partly by bond and partly by cash deposit.

(2) Where any security is required to be given under this Act for any particular purpose, such security may, with the approval of the Commissioner-General, be given to cover any other transaction which the person giving such security may enter into within such period as the Commissioner-General may approve.

(3) All bonds required to be given under this Act shall be so framed that the person giving such bond and any surety to that bond, is bound to the due performance of the conditions, be discharged by the Commissioner-General by that name for the due performance of the conditions of such bond and, all such bonds may, unless sooner

discharged by the Commissioner-General on the expiration of three years from the date of the bond, but without prejudice to the right of the Commissioner-General to require fresh security.

(4) Where any bond given under this Act is discharged, the Commissioner-General shall cause such bond to be cancelled and an endorsement to that effect to be made on that bond.

(5) All bonds given under this Act shall, notwithstanding that any such bond or any surety to the bond is given by any person under the age of twenty-one years, be valid and enforceable as if it were given by a person of full age.

[PCh147s37]37. Provisions relating to sureties

(1) Without prejudice to any right of a surety to any bond given under the provisions of this Act against the person for whom he is a surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly, the surety shall not be discharged or his liability affected, by the giving of time for payment or by the omission to enforce the bond for any breach of any condition or by any other act or omission which would not have discharged the bond if the surety had been the principal debtor.

(2) If any person being a surety—

(a) dies; or

(b) becomes a bankrupt or enters into any arrangement or composition with, or for the benefit of, his creditors; or

(c) departs from the Partner States without leaving sufficient property to satisfy the whole amount of the bond,
the Commissioner-General may require the person giving the bond to enter into fresh security.

[PCh147s38]38. Enforcement of bond Act No. 1 of 1965

(1) Where the conditions of any bond have not been complied with, the Commissioner-General may, in the name of the Commissioner-General take legal proceedings for the enforcement of that bond.

(2) Where any such proceedings are taken, production of the bond shall, without further proof, entitle the Commissioner-General to judgment for the stated liability, unless any person against whom such proceedings are taken, proves compliance with all the conditions of the bond or that the bond or security was not executed by that person or, that he has been released from the provisions of the bond or security or, that he has already made satisfaction for the full amount.

PART VII

DUTIES (ss 39-66)

Liability to Duty (ss 39-44)

[PCh147s39]39. Rates of duties specified in Partner States legislation Act No. 4 of 1970 Sch.

Subject to the provisions of the Excise laws, duty shall be paid by a licensee on excisable goods manufactured by the licensee at the rates and in the circumstances specified in the appropriate Partner State legislation:

Provided that where any excisable goods on which duty has been paid are converted into any other excisable goods liable to a higher rate of duty, whether specific or ad valorem, such converted excisable goods shall only be liable to duty at a rate equal to the difference between such higher rate of duty and the duty originally paid thereon.

[PCh147s40]40. Different rates of excise duty on transfer of goods L.N. 1/1967

(1) Where goods are transferred from one Partner State to another Partner State, and the rates of excise duty in respect of such class of goods in force in the two Partner States are different, then the amount of duty arising from such difference shall be collected or refunded, as the case may be, and in such manner as may be prescribed.

(2) For the purposes of subsection (1), in any case where goods are not liable to excise duty in one Partner State, there shall be taken to be a nil rate of excise duty for such class of goods in that Partner State.

[PCh147s41]41. Excisable goods liable to duty on re-importation

Subject to the provisions of the excise laws, where any remission, rebate or refund of duty has been granted in respect of any excisable goods which have been exported or shipped for use as stores for any aircraft or vessel and such excisable goods are subsequently unloaded in the Partner States for home consumption, such excisable goods shall be liable to duty at the rate in force at the time of such unloading.

[PCh147s42]42. Excisable goods granted remission liable to duty on disposal

(1) Subject to the provisions of the excise laws, where any excisable goods in respect of which any remission, rebate or refund of duty has been granted are subsequently disposed of in any manner inconsistent with the purpose for which such remission, rebate

or refund was granted, unless the Authority otherwise directs, such excisable goods shall be liable to the duty which would have been paid if such remission, rebate or refund, had not been granted.

(2) Where any person in possession of any excisable goods in respect of which any remission, rebate or refund, of duty has been granted for any purpose, proposes to dispose of such goods for any purpose inconsistent with the purpose for which such remission, rebate or refund, was granted, such person shall, unless the Authority otherwise directs, furnish the Commissioner-General with the particulars of such proposed disposal and shall pay the duty on the excisable goods.

(3) Where any excisable goods to which subsection (1) applies are sold or otherwise disposed of without payment of the duty to which they are liable, such goods shall be liable to forfeiture.

(4) Any person who knowingly disposes of or knowingly acquires any excisable goods to which subsection (1) applies without the duty having been paid in accordance with the provisions of this section, shall be guilty of an offence.

[PCh147s43]43. Liability of beer to excise duty Act No. 14 of 1969

No beer may be consumed on or removed from, a brewery or licensed premises unless duty has been paid:

Provided that the Commissioner-General may either specifically or generally permit—

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

(b) the drawing of production samples of beer by the brewer for analysis without payment of duty.

[PCh147s44]44. Transfer of beer in bulk Act No. 14 of 1969

Where a brewer wishes to transfer beer in bulk to another brewery or licensed premises for bottling or packing, the Commissioner-General may require the brewer to give security for the transfer of such beer and pending the giving of such security, the Commissioner-General may refuse to permit such transfer.

Computation of Duty on Beer (ss 45-47)

[PCh147s45]45. Basis for computing duty on beer

(1) Subject to the excise laws, duty on beer shall be paid at the rate specified in the Excise Tariff Act * of the appropriate Partner State.

(2) For the purposes of this Act—

(a) the expression "gravity" in relation to any liquid means the ratio of the weight of a volume of the liquid to the weight of an equal volume of distilled water, the volume of each liquid being computed at sixty degrees Fahrenheit and, where the gravity of any liquid is expressed as a number of degrees, that number shall be such ratio multiplied by one thousand; and

(b) the expression "original gravity" in relation to any liquid means its gravity before fermentation.

(3) The gravity of any liquid at any time shall be ascertained by the use of a saccharometer of a type approved by the Commissioner-General.

(4) Where, for the purposes of this Act, it is necessary to ascertain the original gravity of worts in which fermentation has commenced, that gravity shall be ascertained in the following manner—

(a) a sample shall be taken from any part of such worts and a definite quantity of the sample by measure at the temperature of sixty degrees Fahrenheit, shall be distilled;

(b) the distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation and the gravity of each shall be ascertained;

(c) the number of degrees by which the gravity of the distillate is less than the gravity of distilled water, shall be deemed the spirit indication of the distillate; and

(d) the degrees of original gravity standing opposite to such spirit indication in the table set out in the Second Schedule to this Act added to the gravity of the residue, shall be deemed to be the original gravity of the worts.

[PCh147s46]46. Provision for case of excess gravity in worts

Where the original gravity of any worts in a collecting or fermenting vessel is found by the proper officer to exceed by five degrees or more the original gravity entered in the brewing book by the brewer or the original gravity previously ascertained by the proper officer in relation to such worts, such worts shall be deemed to be the product of a fresh brewing and shall be charged with duty accordingly.

[PCh147s47]47. Time for determining rate of duty and payment Act No. 14 of 1969

(1) The duty on beer shall become due and shall be charged at the rate in force when it has been bottled or packed for sale by the brewer:

Provided that the Commissioner-General may permit the aggregate number of litres of beer bottled or packed by a brewer in any one month to be totalled at the end of that month as if such aggregate number of litres were the product of one bottling or packing operation.

(2) Subject to any remission or rebate which may be granted in accordance with the excise laws, the brewer shall pay to the Commissioner-General on or before the fifteenth day of every month an amount of duty calculated on the total quantity of beer bottled or packed during the preceding month and any payment so made shall be deducted from the amount of duty due in the month next following the month in respect of which the payment was made:

Provided that the Commissioner-General may permit the payment of duty to be deferred to a date not later than the fifteenth day of the month following that on which it becomes due.

Computation of Duty on Spirits (ss 48-52)

[PCh147s48]48. Time of delivery determines rate of duty Ords. Nos. 5 of 1959; 1 of 1961

The duty on spirits shall become due and shall be charged at the rate in force when the spirits liable to such duty are delivered from the distillery or the distiller's warehouse and such duty shall, subject to any remission or rebate which may be granted in accordance with the provisions of the excise laws, be paid by the distiller or secured to the satisfaction of the proper officer, on its becoming due:

Provided that where spirits are removed from a distillery or distiller's warehouse to a rectifier's warehouse, the duty shall become due and shall be charged at the rate in force when the spirits liable to such duty are delivered from the rectifier's warehouse and such duty shall be paid by the rectifier, or secured to the satisfaction of the proper officer, on its becoming due.

[PCh147s49]49. Duty on spirits - attenuation charge Ord. No. 5 of 1959; Act No. 12 of 1969

(1) In the case of a distillery where spirits are manufactured by distillation of a fermented liquor, the excise duty on spirits shall, in addition to being charged on the spirits distilled, be chargeable in respect of each distillation period in accordance with the provisions of this section.

(2) There shall be calculated the quantity of spirits at proof capable of being produced from any wort and wash made at the distillery on the assumption that from every one hundred litres of wort and wash, one litre of spirits at proof will be produced for every five degrees of attenuation, that is to say, for every five degrees of difference between the highest gravity of the wort and the lowest gravity of the wash before distillation and, in such proportion, for any less number of litres of wort and wash or any less number of degrees of attenuation.

(3) The gravity of the wort or wash for the purposes of subsection (2) shall be taken as that declared by the distiller:

Provided that if either gravity is found by the proper officer before distillation and the gravity so found is, in the case of wort, higher or, in the case of wash, lower than that declared by the distiller, the gravity to be taken shall be that found by the proper officer.

(4) There shall be ascertained the quantity computed at proof of the spirits and feints produced at the distillery after deducting the feints remaining at the end of the last preceding distillation period.

(5) If the quantity calculated under subsection (2) of this section exceeds the quantity ascertained under subsection (4), the excise duty on spirits shall be charged and become payable immediately on that excess:

Provided that the Commissioner-General may make such allowance as in his opinion is reasonable from any charge under this section on proof to his satisfaction that the charge arises wholly or in part on account of the removal of wash for the separation of yeast.

(6) In this section, the expression "distillation period" means the period prescribed by regulations made under section 122 for the purpose of taking account of feints and spirits produced.

[PCh147s50]50. Ascertainment of strength, weight and volume of spirits Ord. No. 5 of 1959; Act No. 1 of 1965

(1) For the purpose of this Act the strength, weight or volume of any spirits shall be ascertained in accordance with the provisions of this section.

(2) Spirits shall be deemed to be at proof if the volume of the ethyl alcohol contained in the spirits made up to the volume of the spirits with distilled water, has a

weight equal to that of twelve-thirteenths of a volume of distilled water equal to that of twelve-thirteenths of a volume of distilled water equal to the volume of the spirits, the volume of each liquid being computed at fifty-one degrees Fahrenheit.

(3) The expressions "degree of proof", "degree over proof" and "degree under proof", shall be construed by reference to a scale on which one hundred degrees denotes the strength of spirits at proof, and—

(a) one hundred and one degrees or one degree over proof, denotes the strength of spirits which would be at proof if there were added such quantity of distilled water as would increase by one percent the volume of the spirits computed at fifty degrees Fahrenheit;

(b) ninety-nine degrees or one degree under proof, denotes the strength of spirits which would be at proof, if there were removed from the spirits such quantity of distilled water as would reduce by one percent the volume of the spirits computed at fifty degrees Fahrenheit,

and in such proportion for any other number of degrees.

(4) The equivalent at proof of any spirits not at proof shall for the purposes of this Act, be deemed to be their volume—

(a) multiplied by the number of degrees of proof representing their strength;
and

(b) divided by one hundred.

(5) The Authority may make regulations prescribing the means to be used for ascertaining for any purpose the strength, weight or volume of spirits and, any such

regulations may provide that in ascertaining for any purpose the strength of any spirits or any substance contained in any spirits which is not ethyl alcohol or distilled water, may be treated as if it were and, different regulations may be made for different purposes.

(6) This section shall apply to denatured spirits, enguli and to any fermented liquor as it applies to spirits.

[PCh147s51]51. Penalty for excess or deficiency in stocks of spirits Ords. Nos. 5 of 1959; 15 of 1961

(1) If at any time when an account is taken by a proper officer and a balance struck of the spirits in the stock of a distiller including stocks in the distiller's warehouse or in the stock of a rectifier or denaturer or in the stock of a person obtaining spirits in respect of which duty has been remitted for a particular purpose, any spirits in excess of what should be in stock, is found, the distiller, or rectifier, denaturer or such other person shall be guilty of an offence and shall be liable to a fine equal to double the duty on a quantity of spirits equal to the excess of spirits and the excess of spirits shall be liable to forfeiture:

Provided that the Commissioner-General may restore any forfeited spirits to the distiller, rectifier, denaturer of spirits or the other person, in any case where the excess is accounted for to the satisfaction of the Commissioner-General.

(2) If at any time when an account is taken and a balance struck in accordance with subsection (1), any deficiency in the spirits which should be in stock is found and which cannot be accounted for to the satisfaction of the Commissioner-General, the distiller, rectifier denaturer or that other person, shall be guilty of an offence and shall be liable to a fine equal to double the duty on a quantity of spirits equal to the deficiency and duty on

such a quantity shall become due and shall, notwithstanding section 48, be paid immediately:

Provided that the Commissioner-General may make such an allowance for losses in manufacture or in transit as he may consider reasonable.

[PCh147s52]52. Duty on compounded spirits in bonded warehouse Ord. No. 1 of 1961

(1) Where compounded spirits have been deposited in a bonded warehouse, the amount of any refund of duty payable on such deposit, shall be calculated by reference to the quantity of such spirits computed at proof and shall be an amount equal to the duty at the appropriate rate chargeable on a like quantity of spirits, at the time when duty was paid or secured on the spirits from which such compounded spirits were compounded.

(2) Compounded spirits warehoused under section 29, shall upon delivery from bonded warehouse for home use, be chargeable with excise duty at the rate in force at the time of such delivery.

Computation of Duty on Excisable Goods other than Beer and Spirits (ss 53-55)

[PCh147s53]53. Time of delivery determines rate of duty Ord. No. 5 of 1959

The duty on excisable goods, other than beer and spirits, shall become due and shall be charged at the rate in force when the goods liable to such duty are delivered from the stock room of the licensee; and such duty shall, subject to any remission or rebate which may be granted in accordance with the provisions of the excise laws, be paid by the licensee on its becoming due:

Provided that the Commissioner-General may permit the payment to be deferred to a date not later than the twenty-first day of the month following that on which it becomes due.

[PCh147s54]54. Allowance in determining weight of cigarettes

When ascertaining the weight of cigarettes for the purpose of computing the duty there shall be deducted from the gross weight such amount in respect of the paper and materials other than tobacco, used in the manufacture of cigarettes, as the Commissioner-General may authorise.

[PCh147s55]55. Ascertainment of duty where wine fortified or mixed Ord. No. 15 of 1961

(1) In the case of wine fortified in accordance with subsection (1) of section 34 duty shall be charged at the rate appropriate to wine on the gross quantity of the mixture delivered from the stock room.

(2) When ascertaining the quantity of wine with which imported wine has been mixed in accordance with subsection (2) of section 34 for the purpose of computing the duty there shall be deducted from the gross quantity of the mixture an amount equivalent to the quantity of the duty paid on imported wine used in the mixture.

Payment of Duty (ss 56-59)

[PCh147s56]56. Recovery of duty

Where any excisable goods are liable to duty, such duty shall constitute a debt due to the Community and be charged on the goods in respect of which the duty is payable; and such duty shall be payable by the licensee and may, without prejudice to any other

means of recovery, be recovered by legal proceedings brought by the Commissioner-General in the name of the Commissioner-General.

[PCh147s57]57. Recovery of duty by distress

(1) Where any duty is unpaid by a licensee after the time when, in accordance with the provisions of the excise laws, it is required to be paid, the Commissioner-General may authorise distress to be levied—

(a) upon the goods, chattels and effects, of the licensee who should have paid the duty, wherever such goods, chattels, and effects, may be found; and

(b) upon the plant of any factory and upon any vessel, vehicle, animal or any other article, used in the manufacture, sale or distribution, of such excisable goods by such licensee and found on any premises in the use or possession of such licensee or of any person on behalf of or in trust for, the licensee.

(2) The warrant of distress shall be in the form set out in the Third Schedule and such warrant shall be authority to distrain for the amount of the duty specified in the warrant and for the purpose of levying such distress, the person authorised under such warrant may, if necessary, break open any building or place in the daytime and may call to his assistance, any police officer and such police officer shall render assistance accordingly.

(3) Where anything has been distrained upon under any warrant, such thing shall be kept at the cost of the owner for a period of fourteen days or until the amount due in respect of duty and of the costs and charges of and incidental to, the distress, are paid,

whichever is the sooner; and if at the end of such period such duty, costs and charges are not paid in full, such thing may be sold.

(4) Where any thing is sold in accordance with this section, the proceeds of such sale shall be applied in discharge of—

(a) the duties; and

(b) the costs and charges of and incidental to, the levying of distress and the sale,

and the balance, if any, shall be paid to the owner of such thing if he makes an application within twelve months of the date of the sale.

[PCh147s58]58. Short levy or erroneous refund

Where any duty has been short-levied or erroneously refunded, the person who should have paid the amount short-levied or to whom the refund has erroneously been made, shall, on demand by the proper officer, pay the amount short-levied or repay the amount erroneously refunded, as the case may be and, any such amount may be recovered as if it were duty to which the excisable goods in relation to which the amount was short-levied or erroneously refunded, as the case may be, were liable:

Provided that the proper officer shall not make any such demand after twelve months from the date of such short levy or erroneous refund, as the case may be, unless such short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short-levied or to whom the refund was erroneously made, as the case may be.

[PCh147s59]59. Duties to apply proportionately

Where any duty is imposed or any remission or rebate is allowed under the provisions of the excise laws on any excisable goods according to any specified weight, measure, number or quantity, such duty, remission or rebate, shall be deemed to apply in the same proportion to any greater or less weight, measure, number or quantity, as the case may be, unless specific provision is made to the contrary in any excise law:

Provided that in computing the duty imposed on or any remission or rebate allowable on, any beer, fractions of a litre shall be disregarded.

Remission, Rebate and Refund (ss 60-65)

[PCh147s60]60. Remission

(1) Subject to the provisions of the excise laws, the proper officer may remit any duty payable in respect of any excisable goods where he is satisfied—

(a) that any person, in accordance with the provisions of such laws, entitled to such remission;

(b) that any such goods were destroyed by accidental fire or other unavoidable cause, while in any building, room or place, which has been entered in accordance with this Act and which is in the factory in which the goods were manufactured;

(c) that such goods have, with the prior permission of the Commissioner-General, been destroyed by the licensee under the supervision of a proper officer prior to their leaving any building, room or place, which has been entered in accordance with this Act and which is in the factory in which the goods were manufactured;

(d) that such goods were duly exported or shipped for use as stores for any aircraft or vessel:

Provided that such remission shall be granted only to the licensee and shall not be granted—

(i) where such goods are so exported or shipped in any vessel of less than ten tons register; or

(ii) where the amount of the duty on such goods is less than forty shillings; or

(iii) unless previous notice of such exportation or shipment is given to the proper officer and such goods are produced for examination by the proper officer at the port or place of exportation.

(2) No remission of any duty shall be granted unless the person claiming such remission presents such claim in the prescribed manner, within a period of twelve months from the date when such duty becomes due.

[PCh147s61]61. Rebate

(1) Subject to the provisions of the excise laws, the proper officer may grant a rebate of any duty payable in respect of any excisable goods, where he is satisfied that any person is, in accordance with the provisions of such laws, entitled to such rebate.

(2) No rebate of any duty shall be granted unless the person claiming such rebate presents such claim in the prescribed manner, within a period of twelve months from the date when such duty becomes due.

[PCh147s62]62. Refund

(1) Subject to the provisions of the excise laws, the proper officer may grant a refund of any duty which he is satisfied—

- (a) has been paid in error;
- (b) has been paid in respect of any excisable goods in relation to which, had such duty not been paid, a remission or rebate would have been granted in accordance with this Act.

(2) No refund of any duty shall be granted unless the person claiming such refund, presents such claim in the prescribed manner within a period of twelve months from the date when such duty was paid.

[PCh147s63]63. Remission or refund of duty on spirits delivered for denaturing
Ords. Nos. 5 of 1959; 1 of 1961

Subject to the provisions of the excise laws, the proper officer may remit or refund any duty which is payable or has been paid on any spirits, which are delivered for denaturing in accordance with this Act or on any compounded spirits deposited in a bonded warehouse for exportation or shipment for use as stores for any aircraft or vessel, in accordance with this Act.

[PCh147s64]64. Remission of duty in accordance with laws of Partner States Ord.
No. 5 of 1959

Subject to the provisions of the Excise laws, the Commissioner-General may remit the duty on any spirits delivered in circumstances in which the remission may be granted under any of the laws of any of the Partner States.

[PCh147s65]65. Special provisions relating to spoilt beer Act No. 12 of 1969

(1) Subject to the provisions of the excise laws, the proper officer may grant a remission or rebate of any duty payable on or a refund of any duty paid on, any beer which he is satisfied—

- (a) has become spoilt or unfit for use by reason of any accident; or
- (b) has been returned to the brewer as being spoilt or unfit for use.

(2) No claim under this section for any remission, rebate or refund, of any duty, as the case may be, shall be granted—

(a) in respect of any quantity of beer of less than one hundred and fifty litres but, separate quantities of beer may be aggregated in one claim so as to total such quantity of one hundred and fifty litres;

(b) unless the brewer presents such claim in the prescribed manner within a period of eight months from the date when such duty became due; and

(c) unless the beer in respect of which such claim is made is destroyed or otherwise disposed of in such manner as the Commissioner-General may think fit.

Disputes (s 66)

[PCh147s66]66. Disputes Acts Nos. 3 of 1963; 12 of 1963

(1) Where any dispute arises as to—

- (a) the liability of any goods to duty; or
- (b) the rate or amount of any duty to which any excisable goods are liable,

the licensees shall deposit with the proper officer the duty demanded but may file a suit in court within a period of six months after such dispute for the determination of the matter in dispute.

(2) If no such suit is filed within such period or if any such suit is unsuccessful, such deposit shall be brought to account as the duty on such goods.

(3) If such suit is filed within such period of six months and it is determined—

(a) that the goods are not liable to any duty; or

(b) that the excisable goods are liable to duty of less than the amount deposited,

the whole of the deposit, or the difference between the deposit and the amount of duty found to be due, shall be returned to the licensee.

PART VIII

EXCISE AGENTS (ss 67-69)

[PCh147s67]67. Authority of agent

(1) Where under the provisions of the excise laws any licensee is required or authorised to perform any act, such act may be performed on his behalf by an authorised agent.

(2) A person shall not be the duly authorised agent of any licensee unless—

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

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

(3) The proper officer may require from any person purporting to be the duly authorised agent of any licensee, the production of the written authority and in default of the production of such authority, the proper officer may refuse to recognise such person as a duly authorised agent.

[PCh147s68]68. Liability of duly authorised agent

Any duly authorised agent who performs any act on behalf of a licensee shall, for the purposes of this Act, be deemed to be the licensee, and shall, accordingly, be personally liable for the payment of any duties due in respect of excisable goods manufactured by such licensee and for the performance of all acts which such licensee is required to perform under this Act:

Provided that nothing in this section shall relieve the licensee from any such liability.

[PCh147s69]69. Liability of licensee for acts of duly authorised agent

Any licensee who authorises any agent to act for him for any of the purposes of this Act shall be liable for the acts and declarations of such duly authorised agent and may, accordingly, be prosecuted for any offence committed by such agent in relation to any such goods as if such licensee had himself committed the offence:

Provided that—

(a) a licensee shall not be sentenced to imprisonment for any offence committed by his duly authorised agent, unless such licensee actually consented to the commission of the offence;

(b) nothing in this section shall relieve the duly authorised agent from any liability to prosecution in respect of any such offence.

PART IX

PREVENTION OF EVASION (ss 70-90)

Powers of Officers (ss 70-79)

[PCh147s70]70. Power to patrol freely and moor vessels

(1) Any officer while on duty may enter upon, patrol and pass freely along any premises other than a dwelling-house or any building.

(2) Any officer in charge of any aircraft, vessel or vehicle, employed in the prevention of evasion of the provisions of the excise laws, may take such aircraft, vessel or vehicle to such place as the officer may consider most convenient for that purpose, and may keep such aircraft, vessel or vehicle for such time as he may consider necessary for that purpose.

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

[PCh147s71]71. Power to enter and examine factory Ord. No. 5 of 1959

(1) An officer may, in the course of his duty, enter by day or night upon any premises which have been entered or are required to be entered under the excise laws, or any other premises owned or used for the purpose of his trade by any person to whom a

licence has been granted under the excise laws, and make such examination and enquiry as he may consider necessary and for the purpose of such entry, such officer may require the assistance of, and take with him, any other officer or a police officer.

(2) Where an officer enters upon any such premises in accordance with this section the officer may—

(a) require the licensee to produce, either immediately or at a time to be fixed by such officer, the licence of the licensee or any book, document or thing, which such licensee is required, under the provisions of the excise laws, to keep in his factory or which relates to any excisable goods or materials;

(b) examine and take copies of any such book or document;

(c) seize and detain any such book, document or thing, if, in his opinion, it may afford evidence of the commission of any offence under this Act;

(d) require such licensee or any person employed by the licensee to answer questions relating to any such book, document or thing or to any entry in such book or document or to any excisable goods or materials in such factory;

(e) require any container, envelope or other receptacle, in any such premises to be opened;

(f) at the risk and expense of the licensee, open and examine any package, or any excisable goods or materials, in any such premises;

(g) take and retain without payment such reasonable samples of any excisable goods or materials as he may think necessary for the performance of his duties.

(3) Any officer acting under this section who is unable to obtain free access to any premises or to any receptacle may enter such premises or open such receptacle, in such manner, if necessary by force, as he may think necessary.

(4) Where on the entry upon any premises under this section, any excisable goods, materials or plant, are found in relation to which any offence under this Act has been committed, such excisable goods, materials and plant, shall be liable to forfeiture.

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

[PCh147s72]72. Power to seal buildings

(1) Any officer may, in the course of his duty, lock up, seal, mark or otherwise secure—

- (a) any building, room, place, receptacle or item of plant, in any factory;
- (b) any excisable goods or materials in any factory.

(2) Any person who, except by authority, opens, breaks, alters or in any way interferes with, any lock, seal, mark or other fastening, placed by an officer in accordance with the provisions of this section on any building, room, place, receptacle, item of plant, excisable goods or materials, shall be guilty of an offence.

[PCh147s73]73. Power to stop vehicles

(1) Any officer may, if he has reasonable grounds to believe that any aircraft, vessel or vehicle, is conveying any excisable goods or materials which have been manufactured or dealt with in any way contrary to the provisions of the excise laws, stop and search any such aircraft, vessel or vehicle.

(2) Any officer who is unable to obtain free access to any place or container in the course of any search of any aircraft, vessel or vehicle under this section, may open such place or container in such manner, if necessary by force, as he may think necessary.

(3) Any person in charge of any aircraft, vessel or vehicle, who refuses to stop or to permit such aircraft, vessel or vehicle, to be searched in accordance with this section, shall be guilty of an offence.

(4) Where on the search of any aircraft, vessel or vehicle under this section, any excisable goods or materials are found in relation to which any offence under this Act has been committed, such goods and materials shall be liable to forfeiture.

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

[PCh147s74]74. Power to search person

(1) Subject to this section, any officer may, if he has reasonable grounds to believe that any person has in his possession, whether upon his person or in his baggage, any excisable goods in relation to which any offence under this Act has been committed or full duty has not been paid contrary to this Act, search such person and such officer may, for such purpose, use all reasonable force.

(2) A female shall not be searched except by a female officer.

(3) Where any officer informs any person that the officer proposes to search such person, the person shall, if he so requires, be taken immediately before a magistrate, the Commissioner-General, or any other officer superior to such officer, who may, if he sees no reasonable cause for any search, order such person not to be searched.

(4) Where on the search of any person under this section, any excisable goods are found in his possession, whether upon his person or in his baggage, in relation to which an offence under this Act has been committed or full duty has not been paid contrary to this Act, such goods shall be liable to forfeiture.

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

[PCh147s75]75. Power of arrest Ord. No. 15 of 1961

(1) Any officer may, if he has reasonable grounds to believe that any person is committing, or has, within the past year, committed or aided or abated in the commission of, any offence under this Act, arrest such person and for such purpose, use all reasonable force.

(2) Any person arrested in accordance with this section shall immediately be taken to a magistrate, or to a police station, to be dealt with according to the law.

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

(4) Without prejudice to the powers of a police officer to arrest any person for an offence under this Act which is cognizable to the police under any enactment of any of the Partner States, for the purposes of this section, the expression "officer" includes a police officer.

[PCh147s76]76. Power to search premises Act No. 12 of 1970 Sch.

(1) A proper officer may, if he has reasonable grounds to believe that there is on any premises, any excisable goods on which excise duty has not been paid or any plant

utilised for the manufacture of excisable goods contrary to this Act, enter upon and search such premises by day or by night and for such purpose, the proper officer may use all reasonable force and may require the assistance of another officer or a police officer.

(2) Where on the search of any premises under this section, any plant, excisable goods or materials, are found in relation to which an offence under this Act has been committed, such plant, excisable goods or materials, shall be liable to forfeiture.

(3) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section, but the Commissioner-General shall, if such search is unsuccessful, cause any damage resulting from the search to be made good.

[PCh147s77]77. Search warrants

(1) Without prejudice to any other power under the excise laws, where any officer declares on oath before any magistrate that he has reasonable grounds to believe that there are in any premises—

(a) any excisable goods which have been manufactured or dealt with in any way contrary to this Act; or

(b) any plant which has been utilised for or any materials used in, the manufacture of any excisable goods contrary to this Act,

such magistrate may, by warrant under his hand, authorise such officer to enter upon, search, and use such force as may be necessary, by day or by night, such premises and to seize and carry away any such excisable goods, materials or plant found on the premises.

(2) Any officer in possession of a search warrant may require any police officer to assist in the execution of such warrant and any police officer so required shall render assistance accordingly.

[PCh147s78]78. Power to require production of books

(1) Where any excisable goods, materials or plant, have been seized under the provisions of this Act, the proper officer may require the owner of such goods, materials or plant, to immediately produce all books and documents relating in any way to such goods, materials or plant or to any other excisable goods manufactured, purchased, sold or offered for sale, by such owner within a period of five years immediately preceding such requirement.

(2) On the production of such books or documents the proper officer may inspect and take copies of any entries and the proper officer may seize and detain any such book or document if, in his opinion, it may afford evidence of the commission of any offence under this Act.

[PCh147s79]79. Power to call for assistance Act No. 3 of 1963

Any person making any seizure or arrest in accordance with the provisions of this Act may call upon any other person to assist and such assistance shall be rendered accordingly.

Offences (ss 80-90)

[PCh147s80]80. Offences with violence

(1) Any person who—

(a) maliciously shoots at any aircraft, vessel or vehicle in the service of the
Excise; or

(b) maliciously shoots at, maims or wounds, any officer while in the execution
of duty; or

(c) commits with violence any of the offences referred to in subsection (4),
shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding
twenty years.

(2) Any person who—

(a) while committing any offence under this Act is armed with any firearm or
other offensive weapon; or

(b) while being so armed, is found with any goods liable to forfeiture under this
Act,
shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding
ten years.

(3) Any person who—

(a) while committing any offence under this Act is disguised in any way; or

(b) while being so disguised, is found with any goods liable to forfeiture under
this Act,
shall be guilty of an offence and liable to imprisonment for a term not exceeding three
years.

(4) Any person who—

(a) staves, breaks or destroys, any goods for the purpose of preventing the seizure of the goods; or

(b) rescues, staves, breaks or destroys, any goods for the purpose of preventing the securing of such goods after they have been seized; or

(c) rescues any person arrested for an offence under this Act; or

(d) in any way obstructs any officer in the execution of duty, shall be guilty of an offence.

(5) For the purposes of this section, the expression "violence" means any criminal force or harm to any person or any criminal mischief to any property, or any threat or offer of, such force, harm or mischief or the carrying or use of, any dangerous or offensive weapon in such manner that fear is likely to be caused to any person or such conduct as is likely to cause in any person a reasonable apprehension of criminal force, harm or mischief, to such person or to his property.

[PCh147s81]81. Offences in connection with spirits Ords. Nos. 5 of 1959; 15 of 1961; Act No. 1 of 1965

(1) Any person who—

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

(b) knowingly buys or receives any wort, wash, low wines, feints, enguli or spirits, so concealed or removed; or

(c) knowingly buys or receives or has in his possession, any spirits which have been removed from the place where they ought to have been charged with duty before the

duty payable has been charged and paid or secured, not being spirits which have been condemned; or

(d) without proper authority has in his possession any low wines, enguli or feints; or

(e) without proper authority has in his possession any wort or wash fit for distillation; or

(f) having obtained any spirits in respect of which duty has been remitted for a particular purpose, fails to comply with any conditions imposed by the Commissioner-General concerning the use of such spirits or uses such spirits for a different purpose without the approval in writing of the proper officer,

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand shillings or to both.

(2) All spirits and all stills, vessels, utensils, worts, wash, enguli and other materials for manufacturing spirits—

(a) found in the possession of any person who commits an offence under subsection (1); or

(b) found on any premises on which such an offence has been committed,

shall be liable to forfeiture.

(3) Notwithstanding any other provisions of this Act relating to goods seized as liable to forfeiture, any officer by whom a thing is seized as liable to forfeiture under subsection (2), may at his discretion spill, break up or otherwise destroy that thing.

[PCh147s82]82. Inducing another to commit offence

Any person who by any means procures or induces, or authorises another person to procure or induce, any other person to commit or assist in the commission of an offence under this Act, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year.

[PCh147s83]83. Offence to warn offender

(1) Any person who, with intent to obstruct any officer in the execution of duty, warns or does any act for the purpose of warning, any other person engaged in the commission of an offence under this Act, whether or not such other person is in a position to take advantage of such warning or act, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand shillings or to both.

(2) Where any person is charged with an offence under this section the burden of proving that anything done by such person was not done with such intent shall lie upon that person.

(3) Any person may prevent any other person from giving a warning under this section and for such purpose may enter upon any land and such person shall not thereby be liable to any legal proceedings.

[PCh147s84]84. Offence to assume character of officer

Any person, not being an officer, who takes or assumes the name, designation, character or appearance of an officer for the purpose of—

(a) obtaining admission to any premises; or

(b) doing or procuring to be done any act which that person would not be entitled to do or procure to be done on his own authority; or

(c) doing any unlawful act,

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years, in addition to any other punishment to which he may be liable for the commission of any unlawful act under paragraph (c) of this section.

[PCh147s85]85. Offence to make or use false documents

Any person who, in any matter relating to the excise—

(a) makes any entry of any building, room, place, or item of plant, which is false or incorrect in any material particular; or

(b) makes or causes to be made any declaration, certificate, application, return, account, or other documents, which is false or incorrect in any material particular; or

(c) when required in accordance with this Act to answer any question put to that person by an officer, refuses to answer such question or makes any false or incorrect statement in reply thereto; or

(d) is in any way knowingly involved in any fraudulent evasion of the payment of any duty; or

(e) obtains any remission, rebate, or refund, of duty which to his knowledge he is not entitled to obtain; or

(f) makes any false statement or false representation in order to obtain any remission, rebate or refund, of duty; or

(g) acquires possession of, keeps, conceals, removes or in any way deals with, any excisable goods which have been manufactured or on which the full duties have not been paid, contrary to this Act; or

(h) counterfeits or in any way falsifies or knowingly uses when counterfeited or in any way falsified, any document required or issued by, or used for the purposes of, the excise; or

(i) removes any excisable goods from any factory without the knowledge and consent of the licensee or knowingly has in his possession any such goods, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding three thousand shillings or to both; and any excisable goods in respect of which any offence under paragraph (g) has been committed shall be liable to forfeiture.

[PCh147s86]86. Offence to use false measures

Any licensee who—

(a) uses, keeps, or provides, any false or unjust scales, weighing or measuring instruments, weights or measures; or

(b) by any means prevents or contrives to prevent, the proper officer from taking a just and true account or making proper examination of, any excisable goods or materials,

shall be guilty of an offence and any such scales, instruments, weights, measures, excisable goods or materials, in respect of which such offence was committed, shall be liable to forfeiture.

[PCh147s87]87. Offence to refuse to produce documents

Any person who, when required in accordance with this Act–

(a) to produce any book, document or other thing, in his possession or under his control; or

(b) to perform any act or to make any returns,
refuses or fails to do so, shall be guilty of an offence.

[PCh147s88]88. Offence to interfere with Excise property

Any person who cuts away, casts adrift, destroys, damages, defaces or in any way interferes with, any aircraft, vessel, vehicle, instrument or other thing, used for the purposes of the Excise shall be guilty of an offence and shall be liable to a fine not exceeding one thousand shillings.

[PCh147s89]89. Goods offered on pretence of being duty free

Where any goods are offered for sale under the pretence that they are excisable goods on which duty has not been paid contrary to this Act, then such goods, whether or not duty has in fact been paid, shall be liable to forfeiture.

[PCh147s90]90. Aiders and abettors

Any person who aids, abets, counsels or procures the commission of any offence under the Act, shall be deemed to have committed such offence and shall be punished accordingly.

PART X

PENALTIES, FORFEITURES AND SEIZURES (ss 91-98)

[PCh147s91]91. General penalty

(1) Any person guilty of an offence under this Act for which no specific penalty is provided, shall be liable to a fine not exceeding two thousand shillings.

(2) Where upon conviction for any offence under this Act, any person becomes liable to a fine not exceeding a specified amount, the court may impose a fine not exceeding three times the value of any excisable goods in respect of which such offence was committed or such specified amount, whichever is the greater; and for the purpose of determining the value of any such goods—

(a) the Commissioner-General shall cause such goods to be appraised by the proper officer;

(b) the proper officer shall appraise such goods according to the rate and price for which goods of the like kind but of the best quality upon which duties have been paid were sold at or about the time of the offence and no regard shall be had to any damage or injury sustained by such goods;

(c) a certificate of such appraised value given under the hand of the Commissioner-General shall be prima facie evidence of the value of such goods.

[PCh147s92]92. Vessels liable to forfeiture

(1) Any vessel of less than two hundred and fifty tons register and any vehicle, animal or other thing made use of in the conveyance of any excisable goods, materials or plant liable to forfeiture under this Act, shall itself be liable to forfeiture.

(2) Any aircraft or vessel of two hundred and fifty tons register or more, made use of in the conveyance of any excisable goods, materials or plant liable to forfeiture under

this Act shall not itself be liable to forfeiture but the master of any such aircraft or vessel shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings and such aircraft or vessel may be seized and detained until the fine is paid or security for the fine is given.

(3) Where any vessel, vehicle, animal or other thing is liable to forfeiture under this Act, the tackle, apparel, furniture, and all other gear, used in connection with it shall also be liable to forfeiture.

[PCh147s93]93. Power to seize goods liable to forfeiture Act No. 3 of 1963; L.N. 84 of 1961

(1) Any officer or any police officer, may seize any vessel, vehicle, excisable goods, materials, plant, animals or other thing liable to forfeiture under this Act or which the officer or police officer has reasonable grounds to believe is liable to such forfeiture and such vessel, vehicle, goods, materials, plant, animal or other thing may be seized whether or not any prosecution for any offence under this Act which rendered such vessel, vehicle, goods, materials, plant, animal or other thing liable to forfeiture, has been or will be, taken.

(2) Any vessel, vehicle, excisable goods, materials, plant, animal or other thing seized under the provisions of this section and any aircraft, vessel or other thing which may be seized and detained under this Act, shall be taken to an office of the Excise, police station or to such other place of security as the proper officer may consider appropriate.

(3) Where any excisable goods, materials or plant are liable to forfeiture under this Act, the package in which such goods, materials or plant are and all the contents of such package, shall be liable to forfeiture.

(4) Subject to the approval of the Authority, which approval may be given either generally or in any specific case, the Commissioner-General may, at any time prior to the commencement of any proceedings under this Act in relation to any aircraft, vessel, vehicle, excisable goods, materials, plant, animal or other thing which has been seized under this Act, release any such aircraft, vessel, vehicle, goods, materials, plant, animal or other thing release to the person from whom it was seized.

[PCh147s94]94. Procedure on seizure

(1) Where anything has been seized under this Act, unless such thing was seized in the presence of the owner or, in the case of any aircraft or vessel, of the master, the officer effecting the seizure shall, within one month of such seizure, give notice in writing of such seizure and of the reasons, to the owner or, in the case of any aircraft or vessel, to the master:

Provided that—

(a) no such notice of seizure shall be given in any case where any person has, within a period of one month, been prosecuted for the offence by reason of which such thing has been seized or the offence has been compounded under Part XII and if, after any such notice has been given but before condemnation of such thing in accordance with this Act—

(i) any such prosecution is brought, such thing shall be dealt with in accordance with section 95 as if no such notice had been given;

(ii) the offence is compounded, such thing shall be dealt with in accordance with part XII as if no such notice had been given;

(b) where any such thing has been seized in the presence of any person coming within the definition of owner for the purposes of this Act, it shall not be necessary for the officer effecting the seizure to give notice to any other person coming within such definition;

(c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;

(d) where no person coming within such definition of owner is known, it shall not be necessary for the officer effecting the seizure to give notice to any person.

(2) Where any articles of a perishable nature or any animals are seized, the Commissioner-General may direct that such articles or animals shall be sold either by public auction or by private treaty, and that the proceeds of such sale shall be retained and dealt with as if they were such articles or animals.

(3) Where anything liable to forfeiture under this Act has been seized then—

(a) if any person is being prosecuted for the offence by reason of which such thing was seized, such thing shall be detained until the determination of such prosecution and shall be dealt with in accordance with section 95; or

(b) in any other case, such thing shall be detained until one month after the date of the seizure or after the date of any notice given under subsection (1) , as the case

may be and if no claim is made as provided in subsection (4), such thing shall be deemed to be condemned.

(4) Where anything liable to forfeiture under this Act has been seized, then, subject to proviso (a) to subsection (1) and subject to paragraph (a) of subsection (3), the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner-General, claim such thing.

(5) Where any notice of claim has been given in accordance with subsection (4), the thing seized shall be detained by the Commissioner-General to be dealt with in accordance with this Act:

Provided that the Commissioner-General may permit such thing to be delivered to the person making such claim, in this Part referred to as the claimant, subject to such claimant giving security for the payment of the value of that thing, as determined by the Commissioner-General, in the event of its condemnation.

[PCh147s95]95. Effect of conviction on things liable to forfeiture

(1) Where any person is prosecuted for an offence under this Act and anything is liable to forfeiture by reason of the commission of such offence, the conviction of such person for such offence shall, without further order, have effect as the condemnation of such thing.

(2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, upon the acquittal of such person, the court may order such thing either—

- (a) to be released to the person from whom it was seized or to the owner; or
- (b) to be condemned.

[PCh147s96]96. Procedure after notice of claim

(1) Where any notice of claim has been given to the Commissioner-General in accordance with section 94, the Commissioner-General may, within a period of two months from the receipt of such claim, either—

(a) by notice in writing to the claimant, require the claimant to institute proceedings against the Commissioner-General by name of the Commissioner-General for the recovery of such thing, within two months of the date of such notice; or

(b) himself institute proceedings for the condemnation of such thing.

(2) Where the Commissioner-General fails within a period of two months either to require the claimant or himself to institute, proceedings in accordance with subsection (1), such thing shall be released to the claimant.

(3) Where the Commissioner-General has, in accordance with subsection (1), required the claimant to institute proceedings and the claimant has failed to do so, upon the expiration of such period, such thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of as the Commissioner-General may direct.

(4) Where any proceedings have been instituted in accordance with this section—

(a) if the court is satisfied that such thing was liable to forfeiture under this Act, such thing shall be forfeited; and

(b) if the court is not so satisfied, such thing shall be released to the claimant:

Provided that the court shall not release such thing to the claimant unless the court is satisfied that the claimant is the owner or, by reason of any interest in that thing the claimant, is entitled to the possession; and if the court is not so satisfied, such thing shall be condemned as if no claim had been made.

[PCh147s97]97. Provisions relating to condemnation

(1) Where anything has been seized under this Act as being liable to forfeiture, the condemnation of such thing shall in no way be affected by the fact that any owner of such thing was in no way concerned with the act which rendered such thing liable to forfeiture.

(2) Where any thing is condemned under this Act, then—

(a) subject to section 98, such thing shall be forfeited and may be sold, destroyed or otherwise disposed of in such manner as the Commissioner-General may think fit;

(b) the condemnation of such thing shall have effect as from the date when the liability to forfeiture arose; and

(c) such condemnation shall, subject to any appeal in any proceedings which resulted in such condemnation, be final and except as provided in section 98, no application or proceedings for restoration shall lie.

[PCh147s98]98. Restoration of seizures L.N. 84/1961

Where anything has been seized under this Act, the Authority may, whether or not such thing has been condemned, direct that such thing shall be released and restored to the person from whom it was seized or to the owner upon such conditions as the Authority may think fit.

PART XI

LEGAL PROCEEDINGS (ss 99-107)

[PCh147s99]99. Proceedings triable in court of resident magistrate

(1) Without prejudice to the powers of any other court of competent jurisdiction, any prosecution for an offence under this Act may be heard and determined before court of the resident magistrate and where such court hears and determines such prosecution notwithstanding anything contained in any legislation of any of the Partner States, such court shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on any person convicted of the offence.

(2) Without prejudice to the powers of any other court of competent jurisdiction, any proceedings under Part X relating to any claim to anything which has been seized under this Act and any claim to any duties, charges, expenses or other sums, payable under this Act, may be heard and determined in civil proceedings before the court of the resident magistrate, notwithstanding the pecuniary jurisdiction in relation to civil proceedings before such court.

(3) Except where otherwise expressly provided, any person brought before a court for any offence under this Act, shall be dealt with in accordance with the law relating to criminal procedure of the Partner State in which the court is situate.

[PCh147s100]100. Actions by or against the Commissioner-General

(1) Where any loss or damage is occasioned to any plant, excisable goods or materials, in any factory through the wilful or negligent act of an officer, then an action

shall lie against the Commissioner-General or such officer in respect of such loss or damage.

(2) Where under this Act any proceedings may be brought by or against the Commissioner-General, the Commissioner-General may sue or be sued in the name of the Commissioner-General and may for all purposes be described by that name and, notwithstanding that any such action may lie in tort, the Commissioner-General shall be responsible for the acts and defaults of any officer as if such officer were his servant or agent:

Provided that nothing in this section shall confer any right of action against the Commissioner-General in his representative capacity, whether in contract or in tort, unless such right of action is specifically given in any other provision in this Act.

(3) Where under this Act any proceedings are brought by or against the Commissioner-General in his representative capacity, costs may be awarded to or against the Commissioner-General.

(4) Where under this Act any proceedings are brought by or against the Commissioner-General in his representative capacity and—

(a) any sums or costs are recovered by the Commissioner-General, such sums or costs shall be credited to the Excise revenue; and

(b) any damages or costs are ordered to be paid by the Commissioner-General, such damages or costs shall be paid out of the moneys appropriated for the administration of the Excise and the Commissioner-General shall not be personally liable.

[PCh147s101]101. Limitation of proceedings

Any proceedings for an offence under this Act may be commenced and anything liable to forfeiture under this Act may be seized, within five years of the date of the offence.

[PCh147s102]102. Provisions relating to proof in proceedings Ord. No. 15 of 1961; Act No. 3 of 1963

In any proceedings under this Act—

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

(b) the onus of proving—

(i) the place of manufacture of any excisable goods;

(ii) that any spirits in respect of which duty has been remitted for a particular purpose, have been used for such purpose;

(iii) the payment of the proper duties or the lawful manufacture, removal, conveyance or exportation of any excisable goods;

(iv) that any materials or plant have been unlawfully seized,

shall be on the person being prosecuted or claiming anything seized under this Act;

(c) the averment by the Commissioner-General—

(i) that any person is or was an officer or that any act was performed by an officer in the execution of his duty;

(ii) that any goods were staved, broken or destroyed, or were staved, broken or destroyed, or were staved, broken or destroyed for the purpose of preventing the seizure of the goods or the securing of the goods after seizure;

(iii) that any act was done within any part of the Partner States;

(iv) that the Commissioner-General or any officer is or is not satisfied as to any matter as to which he is required to be satisfied under the provisions of this Act;

(v) that the Commissioner-General has directed or requested any proceedings under this Act to be instituted,

shall be prima facie evidence of such fact;

(d) a certificate purporting to be signed by the Government Analyst or the Government Chemist, of any of the Partner States shall be receivable in evidence and shall be prima facie evidence of the matters recorded in the certificate;

(e) the production of any document purporting to be signed or issued by the High Commission, the Authority, the Organisation, the Community, the Commissioner-General, or any person in the service of the High Commission, the Organisation, the Community or the Government of any of the Partner States, shall be prima facie evidence that such document was so signed or issued;

(f) a copy, certified under the hand of the Commissioner-General, of any entry in any book or document required to be kept for the purposes of the Excise laws, shall be receivable in evidence and shall be prima facie evidence of such entry and of the matters recorded in the entry;

(g) any certificate or copy of an official document purporting to be certified under the hand and seal or stamp of office of any of the principal officers of Customs and Excise in the United Kingdom or of the principal officer of Customs and Excise in any member country of the Commonwealth or of any British Consul or British Vice-Consul in any foreign country, shall be receivable in evidence and shall be prima facie evidence of the matters recorded therein;

(h) an officer shall be deemed to be a competent witness notwithstanding that such officer is entitled to any reward; and

(i) the fact that security has been given by bond or otherwise, for the payment of any duty or for the compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are brought, shall not be a defence.

[PCh147s103]103. Penalties for offences

(1) Where any court imposes on any person a fine for an offence under this Act in relation to which an alternative sentence of imprisonment is not specified, such court may order such person, in default of payment of such fine, to be imprisoned for any term not exceeding—

(a) six months, where the fine imposed does not exceed two thousand shillings;

(b) twelve months, where the fine imposed exceeds two thousand shillings.

(2) Where any person is convicted of an offence under this Act involving intent to defraud, the maximum fine which may be imposed on such person shall be double the fine provided under this Act.

(3) Where any person is convicted of an offence under this Act and is liable to a fine of two thousand shillings or more and such person has previously been convicted of an offence under this Act or has previously been ordered to pay any sum or money under the provisions of Part XII and such order has been enforced by any court, the court before which such person is so convicted, may order such person to be imprisoned for a term not exceeding three years or to pay the fine to which he is liable or to be both imprisoned and fined.

(4) Where an offence under this Act is committed by a body corporate and it is proved that such offence has been committed with the consent or connivance or, is attributable to any neglect on the part of, any director, manager, secretary or any other officer, of the body corporate or by any person purporting to act in any such capacity, such officer or that other person as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[PCh147s104]104. Place of trial

Any person charged with any offence under this Act may be proceeded against, tried, and punished, in any place in which that person may be in custody for that offence as if the offence had been committed in such place and the offence shall for the purposes of prosecution, trial, or punishment, be deemed to have been committed in that place:

Provided that nothing under this section shall preclude the prosecution, trial and punishment, of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

[PCh147s105]105. Protection of witnesses

(1) No witness on behalf of the prosecution or of the Commissioner-General in any proceedings under this Act, shall be compelled to disclose, the fact that he received any information relating to any excise matter or the nature of any such information or the name of the person who gave such information.

(2) No officer appearing as a witness in any proceedings shall be compelled to produce any confidential reports made or received by in his official capacity or to produce the officer any confidential information received by the officer in that capacity.

[PCh147s106]106. Reasonable grounds a defence in any action against officer

(1) Where any proceedings, whether by way of prosecution or otherwise, are taken under this Act, and—

(a) such proceedings result in a determination in favour of any person prosecuted or in favour of any owner claiming anything which has been seized; and

(b) such proceedings arise out of any act done, whether by way of seizure or otherwise, by any officer in the execution or intended execution of his duty under this Act; and

(c) the court before which such proceedings are determined finds that there were reasonable grounds for the act done by the officer, such court shall, upon request made by or on behalf of such officer, certify on the record that the act was done on reasonable grounds and a certified copy of such finding shall, on the request of such officer, be delivered to the officer and shall be receivable as evidence in any proceedings in proof of such finding.

(2) No officer shall be liable to any action or other proceedings on account of any act in respect of which a court has, under subsection (1), found that there were reasonable grounds for such act.

(3) Where any proceedings are brought against any officer on account of any act done, whether by way of seizure or otherwise, in the execution or intended execution of his duty under this Act and judgment is given against such officer, notwithstanding that in any proceedings referred to in subsection (1) a court has not found that there were reasonable grounds for such act, if the court before which such proceedings are heard is satisfied that there were reasonable grounds for such act, the plaintiff shall be entitled to recover any thing seized or the value of such thing, but shall not be entitled to any damages and costs shall not be awarded to either party.

[PCh147s107]107. Power of officer to prosecute

Any officer may appear and prosecute in any prosecution before a resident magistrate court for an offence under this Act.

PART XII

SETTLEMENT OF CASES BY THE COMMISSIONER-GENERAL (ss 108-109)

[PCh147s108]108. Power of Commissioner-General to compound offence by agreement

(1) The Commissioner-General may, where upon being satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which anything is liable to forfeiture, compound such offence and may order such person to pay such sum of money, not exceeding the amount of the fine to which

such person would have been liable if the person had been prosecuted and convicted for the offence, as the Commissioner-General may think fit; and the Commissioner-General may order anything liable to forfeiture in connection with the offence to be condemned:

Provided that the Commissioner-General shall not exercise the power under this section unless the person admits in writing to have committed the offence and requests the Commissioner-General to deal with such offence under this section.

(2) Where the Commissioner-General makes any order under this section—

(a) such order shall be put into writing and shall have attached to it the request of such person to the Commissioner-General to deal with the matter;

(b) such order shall specify the offence which such person committed and the penalty imposed by the Commissioner-General;

(c) a copy of such order shall be given to such person if he so requests;

(d) such person shall not be liable to any further prosecution in respect of such offence and, if any such prosecution is brought, it shall be a good defence for such person to prove that the offence with which he is charged has been compounded under this section; and

(e) such order shall be final and shall not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court.

[PCh147s109]109. Power of Commissioner-General to compound offence without agreement

(1) The Commissioner-General may, upon being satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of

which anything is liable to forfeiture, compound such offence and may summarily order such person to pay such sum of money, not exceeding shillings two hundred, as the Commissioner-General may think fit, and the Commissioner-General may summarily order anything liable to forfeiture in connection with that offence and which does not exceed shillings two hundred in value to be.

(2) Where the Commissioner-General makes any summary order under this section—

- (a) such order shall be put into writing;
- (b) such order shall specify the offence which such person committed and the penalty imposed by the Commissioner-General;
- (c) a copy of such order shall be given to such person if he so requests;
- (d) such person shall not be liable to any further prosecution in respect of such offence and, if any such prosecution is brought, it shall be a good defence for such person to prove that the offence with which he is charged has been compounded under this section; and
- (e) such order shall be final and shall not be subject to appeal and may be enforced in the same manner as if it were an order of a court of the resident magistrate.

PART XIII

MISCELLANEOUS PROVISIONS (ss 110-122)

[PCh147s110]110. Provisions relating to prescribed forms

(1) Where the form of any return, account, bond or other document, required or authorised for the purposes of this Act has been prescribed, all such returns, accounts,

bonds or other documents, shall be in the prescribed form and shall contain all the prescribed particulars.

(2) Where any prescribed form contains, by way of note or otherwise, a clear direction or indication of any requirement as to—

- (a) the colour or size of the form;
 - (b) the number of copies of the form to be tendered the words "in duplicate" or similar words shall be sufficient indication of the number required;
 - (c) the nature or form of the information to be furnished;
 - (d) any action to be taken by the person concerned or his agent, in the transaction in which the form is used;
 - (e) the receipts to be signed by any person in proof of the fact that the goods described in the form have been received for carriage or otherwise,
- the requirements so indicated shall be deemed to have been prescribed.

(3) The proper officer may require copies of any prescribed form in addition to the numbers indicated on such form.

[PCh147s111]111. Provisions relating to all documents

(1) Where any document required or authorised for the purposes of the excise laws contains any words not in the English language, the person producing or using such document may be required to produce with that document, a correct English translation of such words and, all books and other records required by this act to be kept by a licensee, shall be kept in the English language.

(2) Where any person is required to submit any form for the purposes of the excise laws, the proper officer may require such person to submit as many copies of the form as he may think necessary.

(3) Any licensee who contravenes subsection (1) shall be guilty of an offence.

[PCh147s112]112. Production of documents

(1) The proper officer may, within two years of the date of manufacture, delivery or exportation of any excisable goods, require any person concerned in such manufacture, delivery or exportation—

- (a) to produce all books and documents relating in any way to such goods;
- (b) to answer any question in relation to such goods; and
- (c) to make such declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin or destination, of such goods, as the proper officer may think fit.

(2) The proper officer may require any person concerned in the exportation of any excisable goods to produce, within such time as the proper officer may consider reasonable, a certificate from the Customs authorities at the port of discharge of such goods according to the export entry.

(3) Where any person fails to comply with any requirement made by the proper officer under this section, the proper officer may refuse delivery or prevent exportation, of the goods or may allow such delivery or exportation upon the deposit of such sum, pending the production of the book and documents, as the proper officer may think fit; and any sum deposited shall be forfeited and paid into the excise revenue, if such

documents are not produced within three months or within such further time as the proper officer may permit.

(4) Where any requirement made by the proper officer under this section relates to goods which have already been delivered or exported and such person fails to comply with such requirement, the proper officer may refuse to allow such person to deliver or export any other excisable goods.

(5) The proper officer may retain any document produced by any person under this section but such person shall be entitled to a copy certified under the hand of the Commissioner-General and, such certified copy, shall be receivable in evidence in all courts and shall have equal validity with the original.

[PCh147s113]113. Provisions relating to declarations and signatures

(1) Where under the provisions of the excise laws any declaration is required or authorised to be made, such declaration may be made before any magistrate, justice of the peace, notary public or commissioner for oaths or before any officer authorised by the Commissioner-General for that purpose.

(2) Where under the provisions of the excise laws any documents is required or authorised to be signed in the presence of the Commissioner-General or of any particular officer, if such document is signed in the presence of a witness who is approved by and whose signature is known to, the Commissioner-General or such particular officer, such document shall be deemed for the purposes of this Act to have been signed in the presence of the Commissioner-General or such particular officer.

[PCh147s114]114. Service of notices

(1) Where under the provision of the excise laws, any notice or other document is required or authorised to be served upon to be or given or delivered to, the Commissioner-General or any other officer, such notice or other document may be so served, given or delivered—

(a) by delivering it personally to the Commissioner-General or such other officer;

(b) by leaving it at the office of the Commissioner-General or of such other officer; or

(c) by sending it by post to the Commissioner-General or to such other officer.

(2) Where under the provisions of the excise laws any notice or other document is required or authorised to be served upon or to be given or delivered to, any person by the Commissioner-General or any other officer, such notice or other document may be served, given or delivered—

(a) by delivering it personally to such person;

(b) by leaving it at the usual or last known place of address of such person; or

(c) by sending it by post addressed to the person at his usual or last known place of address.

[PCh147s115]115. Provisions relating to removal of goods

Where under this Act any excisable goods are required or authorised to be—

(a) removed to any place for security, examination, weighing, sorting for or any other purpose, prior to delivery or, in the case of excisable goods for export, to

exportation, all such operations shall be performed by or at the expense of, the owner of such goods;

(b) unpacked, sorted, piled or otherwise prepared for examination, all such operations shall be performed by or at the expense of, the owner of such goods and in such manner as the proper officer may require so as to enable the proper officer to examine and take account of such goods.

[PCh147s116]116. Proper officer may take samples

The proper officer may at any time take samples of such goods for such purposes as the Commissioner-General may think necessary and, any such samples, shall be disposed of and accounted for, in such manner as the Commissioner-General may direct.

[PCh147s117]117. Licensee to furnish annual audit certificate

The Commissioner-General may require a licensee to submit annually an audited certificate, signed by a qualified accountant not in the employment of the licensee, in relation to the books and records required to be kept by the licensee under the provision of the excise laws.

[PCh147s118]118. Rewards Act No. 4 of 1970 Sch.

The Commissioner-General may award to any officer or person—

(a) who has arrested or has assisted in the arrest of any other person under this Act, such reward not exceeding shillings two hundred, as the Commissioner-General may think fit, upon the conviction of such other person;

(b) who has seized any thing under this Act, such reward not exceeding the value of the thing seized, as the Commissioner-General may think fit;

(c) by whose assistance a conviction is obtained in any prosecution under this Act such reward as the Commissioner-General may think fit;

(d) by whose assistance any offence is compounded in accordance with Part XII of this Act such reward as the Commissioner-General may think fit.

[PCh147s119]119. Auctioneers legislation not to apply to sales

Where any goods are sold under this Act, then the provisions of any legislation of any of the Partner States relating to auctioneers shall not apply to such sale.

[PCh147s120]120. Licensing of vehicles conveying excisable goods to stock room

(1) The Commissioner-General may require any vehicle intended to be used for the conveyance of any excisable goods, other than beer, to the stock room, to be licensed by and, in such case, application for such licence shall be made in such manner as may be prescribed.

(2) Any person who, without the permission in writing of the proper officer and, after being required to license any such vehicle, uses any unlicensed vehicle for conveyance, shall be guilty of an offence and shall be liable to a fine not exceeding shillings four hundred.

[PCh147s121]121. Power of Commissioner-General in special cases

Notwithstanding anything contained in this Act, the Commissioner-General may, in order to meet the exigencies of any special case, dispense wholly or in part, with any requirement imposed on a licensee under this Act.

[PCh147s122]122. Regulations 5 of 1959, Ords Nos. 5 of 1959; 1 of 1961; 15 of 1961

(1) The Authority may make regulations generally for giving effect to the provisions of this Act and for the conduct of any business relating to the Excise and, without prejudice to this generality with respect to—

(a) the fee to be paid for any licence issued under this Act;

(b) the conditions under which excisable goods may be transferred between the Partner States;

(c) the weights, quantities and sizes, in which excisable goods may be made up or packed for sale;

(d) the returns to be made by a licensee for the purposes of this Act;

(e) the transmission by post without prepayment of postage, of any return or declaration required or authorised under this Act;

(f) regulating the manufacture of spirits;

(g) securing and collecting duty on spirits;

(h) prescribing the maximum and minimum strengths of any wort, wash or spirits;

(i) regulating the receipt, storage, warehousing, removal and delivery of spirits, prior to the payment of duty or in respect of which, any duty has been remitted;

(j) regulating operations in a distiller's or rectifier's warehouse;

(k) regulating the denaturing of spirits;

(l) regulating the manufacture and fortification of wine;

(m) regulating the mixing of wine with imported wine.

(2) Any regulations made under subsection (1) may provide that any person contravening any of the provisions of such regulations, shall be guilty of an offence and liable to a fine not exceeding shillings two thousand.

(3) Regulations made under this section shall be laid before the National Assembly at the next meeting after the publication of such regulations and, if the National Assembly within a period of seven days after such regulations are so laid resolves that such regulations shall be annulled, such regulations shall cease to have effect as from the date of such resolution but without prejudice to the validity of anything previously done under or prior or to the making of new regulations.

PART XIV

EXCISE TARIFF (ss 123-152) R.L. Cap. 332; Ords. Nos. 30 and 51 of 1953; 20 of 1954; 34 of 1955; 16 of 1958; 15 and 37 of 1959; Acts Nos. 47 of 1962; 50 of 1968; 11 of 1969; 10 of 1973; 9 of 1977; 13 of 1989; 17 of 1990; 18 of 1991; 14 of 1992; 10 of 1993; 8 of 1998; 12 of 1999; 14 of 2001

[PCh147s123]123. Interpretation Ord. No. 37 of 1959 s. 2; Acts Nos. 10 of 1973 s. 3; 9 of 1977 s. 10

In this Part—

"ex-factory selling price" in relation to any product means the price at which the manufacturer of such product sells the product, exclusive of the excise duty and the sales tax;

"Minister" means the Minister responsible for finance;

"sugar" means sugar of any description, finished or unfinished, and any product of any sugar manufacturing operation containing saccharine matter, but does not include glucose, jaggery, molasses, sugar candy, exhausted sugar-cane pulp, or brown sugar made by a person and in premises, approved by the Minister and in the manufacture of which neither a vacuum pan nor a vacuum evaporator has been employed.

[PCh147s124]124. Imposition of excise duty Acts Nos. 13 of 1989 s. 10; 8 of 1998 s.

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(1) There shall be charged, levied and collected a duty, to be known as excise duty, in respect of goods specified in the Second column of the First Schedule to this Act the rates specified in the third and fourth column of that Schedule.

(2) The Minister may, by order published in the Gazette, amend, vary or replace the First Schedule.

(3) Every order made under subsection (2) shall be submitted for approval, to be signified by the resolution of the National Assembly in its next meeting.

(4) If any such order is not approved by the National Assembly it shall thereupon either expire forthwith or cease to have effect, as the case may be, but anything previously done or suffered to be done under the order shall not be affected.

[PCh147s125]125. Persons liable to pay excise duty Act No. 8 of 1998 s. 14

(1) The duty imposed by this Act shall become due and payable in respect of—

(a) any scheduled article imported, by the importer thereof at the time immediately before the article ceases to be subject to customs control or at such other time as the Minister may by notice in the Gazette, direct;

(b) any scheduled article manufactured in Mainland Tanzania, by the manufacturer—

- (i) upon sale of the article by him, or
- (ii) upon the article ceasing to be subject to customs control, or
- (iii) upon removal of the article from the premises where it manufactured, whichever first occurs.

(c) any scheduled article manufactured or imported by any person free of duty and which is subsequently sold to any other person, by the purchaser at the time of the sale of the article by him;

(2) The Minister may, by order published in the Gazette, provide that in respect of any article or class of articles specified in that order a person other than a person liable under subsection (1) shall be liable to pay the duty and where that order, is made the person specified in the order shall be liable to pay the duty in lieu of the person who would otherwise have been liable to pay the duty under the provisions of subsection (1), and the provisions of this Act and of any regulations made under the Act shall apply to the person so specified as if he were the person in lieu of whom he is liable to pay the duty.

(3) Where any person other than a person liable to pay duty under the provisions of this section undertakes to pay the duty and satisfies the Commissioner that he will pay the duty, the Commissioner may, by order in writing exempt the person who would otherwise be liable to pay the duty from payment of the duty and order that the person giving such an undertaking shall be liable to pay the duty, and upon such order being

made, the person giving the undertaking shall be liable to pay the duty under the provisions of subsection (1).

[s. 124A]

[PCh147s126]126. Payment of duty Act No. 8 of 1998 s. 14

The duty payable under this Act shall be paid to the Commissioner or any person acting on behalf of the Commissioner.

[s. 124B]

[PCh147s127]127. Payment of duty may be deferred Act No. 8 of 1998 s. 14

Notwithstanding the provisions of section 4—

(a) the Minister may, by regulations made under this Act or by order published in the Gazette provide for payment of duty' by any person or category of persons liable to pay duty on any day other than the day on which such person or persons would be liable to pay duty under section 3;

(b) the Commissioner may, where he is satisfied that it is reasonable so to do, permit payment of duty in any case to be deferred to a date not later than the last day of the month following the month in which the duty becomes due.

[s. 124C]

[PCh147s128]128. Where person liable is absent from United Republic Act No. 8 of 1998 s. 14

Where any person who is liable to pay duty under this Act is not resident in the United Republic, the Commissioner may by notice in writing given to any agent of such person or to any person managing the business of that person who is resident in the United

Republic and who has acted on behalf of that person in any matter resulting in liability to pay the duty, direct the agent or manager of the person in respect of whom duty is due, to pay the duty in place of that person, and upon that direction, the agent or manager shall become liable to pay the duty as if he were a person liable under the provisions of section 4.

[s. 124D]

[PCh147s129]129. Re-importation Act No. 8 of 1998 s. 14

(1) Where any scheduled article is re-imported after being exported, and in respect of which no drawback or refund of duty has been paid, or if paid, has been returned to the Commissioner, such article shall not be liable to duty; but if the article has been processed abroad and its excisable value has, in consequence of being so processed, increased, the amount of the increased excisable value shall be liable to duty at the rate applicable to the scheduled article so re-imported.

(2) this section shall not apply to any case where the scheduled article re-imported is a composite article which is composed in part only of the scheduled article exported unless the whole of the scheduled article re-imported is composed of two or more scheduled articles that has been exported.

[s. 124E]

[PCh147s130]130. Double payment of duty Act No. 8 of 1998 s. 14

Subject to the provisions of section 8, excise duty shall not be levied, more than once in respect of any scheduled article.

[s. 124F]

[PCh147s131]131. Customs control of scheduled article Act No. 8 of 1998 s. 14

(1) The following scheduled articles shall be subject to customs control:

(a) all imported articles, including articles imported through Post Office, from the time of importation until delivery for home consumption or until exportation, whichever first occurs,

(b) all articles under draw-back from the time of the claim for draw-back until exportation.

(c) all articles which, with the permission of the proper officer stored in a customs. area pending exportation;

(d) all articles on board any aircraft or vessel whilst within any port or place in Mainland Tanzania.

(2) Where any scheduled article is subject to customs control—

(a) a proper officer may at any time examine the article;

(b) except with the consent of a proper officer or in accordance with the provisions of this Act no person shall interfere in any way with the article.

(3) Where any scheduled article is subject to customs control the Commissioner may permit the owner of that article to abandon the same to the customs; and on that abandonment that article may, at the expense of the owner thereof, be destroyed or otherwise disposed of in a manner as the Commissioner may direct and the duty thereon shall be remitted or refunded, as the case may be.

[s. 124G]

[PCh147s132]132. Importation of scheduled articles Act No. 8 of 1998 s. 14

(1) A scheduled article shall be imported only by means, routes and at places and times as may prescribed and shall be consigned to the proper office at the place of importation for the account of the importer or owner of article, and shall remain in place under customs control until the duty in respect of it or any duty due by its importer is paid.

(2) Notwithstanding the provisions of subsection (1)–

(a) where the payment of the duty in respect of any scheduled articles has been deterred by the Minister or by the Commissioner in accordance with provisions of section 6, the proper officer shall release the article to the importer.

(b) where any scheduled article is, on first importation warehoused in a Government warehouse or bonded warehouse in accordance with the provision of the Customs Tariff Act *, the Commissioner may, subject to such conditions as he shall impose for the protection of the revenue, authorise the release of the article notwithstanding that the duty thereon has not been paid; but this shall be done only if the Commissioner is satisfied that at the time of such release the articles is the property of a person who is liable to pay the duty.

[s. 124H]

[PCh147s133]133. Entry of scheduled articles and warehousing Acts Nos. 12 of 1976; 8 of 1998 s. 14

The provisions of the Customs Tariff Act relating to the entry and warehousing of goods liable to import duty shall apply mutatis mutandis to the entry and warehousing of scheduled articles under this Act.

[s. 124I]

[PCh147s134]134. Duty of an importer Act No. 8 of 1998 s. 14

(1) Every importer of a scheduled article shall, as soon as may be practicable after the importation of the article, and not later than the time prescribed in that behalf–

(a) furnish to a proper officer in the prescribed form necessary information as may be required concerning the article together with a declaration made; and subscribed by him as to the truth of all particulars contained in such form;

(b) fully and immediately answer all relevant questions put him by a proper officer;

(c) produce all consignment notes and all other relevant documents demanded of him by a proper officer;

(d) comply with other requirements as may be prescribed.

(2) Any person who contravenes any the provisions of this section shall be guilty of an offence.

[s. 124J]

[PCh147s135]135. Exemption from duty on scheduled articles remaining on board Act No. 8 of 1998 s. 14

Scheduled articles remaining on board and exported in the aircraft or vessels in which they are imported, whether as stores or otherwise, shall be exempted from liability to the duty.

[s. 124K]

[PCh147s136]136. Exemption from duty on articles entered for exportation, etc. Act No. 8 of 1998 s. 14

Where any scheduled article is entered under bond—

- (a) for export, for transshipment or in transit; or
- (b) for use as stores for aircraft or vessels,

and is proved to the satisfaction of the Commissioner to have been duly exported or used as such stores, as the case may be, it shall be exempt from liability to the duty.

[s. 124L]

[PCh147s137]137. Information and documents Act No. 8 of 1998 s. 14

(1) Every manufacturer of the scheduled article shall, within twenty-one days—

- (a) of commencing manufacturing of the scheduled article, or
- (b) of an article manufactured by him becoming liable to duty,

whichever is the earliest, submit to the Commissioner a return giving details of the manufacture by him of the scheduled article, its price and all other particulars as may be prescribed.

(2) Where a manufacturer has submitted a return under subsection (1) and any change occurs in any of the facts the particulars of which have been given in the return the manufacturer shall,, within fifteen days following the change, notify the Commissioner in writing of the change.

(3) Every manufacturer of a scheduled article shall submit to the Commissioner a monthly return giving particulars of—

(a) the quantity or the number of scheduled articles sold by him during one month;

(b) the price at which the articles have been sold;

(c) any other matters as may be prescribed.

(4) Every return required by subsection (3) shall be submitted not later than the fifteen day of the month following the month to which the return relates:

Provided that Commissioner may where he is satisfied that it is reasonable so to do, permit a manufacturer to submit his return in respect of any month to which the return relates.

[s. 124M]

[PCh147s138]138. Manufacturer to keep records Act No. 8 of 1998 s. 14

Every manufacturer of a scheduled article shall keep records relating scheduled articles manufactured and sold by him as may be prescribed, or as the Commissioner may direct.

[s. 124N]

[PCh147s139]139. Rate of duty Act No. 8 of 1998 s. 14

(1) Subject to the provisions of subsection (2) the duty shall be payable at the rate in force at the time the duty becomes due and payable.

(2) In any case where the time when the duty becomes due and payable in respect of any scheduled article cannot for any reason be ascertained, the duty shall be payable in respect of any article at the rate in force at the time of the payment of the duty.

[s. 124O]

[PCh147s140]140. Computation of tax Act No. 8 of 1998 s. 14

(1) Where the rate of duty is not expressed as a specified but is expressed as a percentage—

(a) if not indication is given as to the amount to which the percentage relates, or if any indication given is vague or, otherwise indeterminable, the percentage shall be deemed to relate to the taxable value of the scheduled article as determined in the manner provided for in section 22;

(b) if the percentage is expressed to be a percentage of any specific amount or of an amount arrived by any calculating expressly provided for, the duty shall be the specified percentage of the amount so calculated.

(2) Notwithstanding any provision of this Act to the contrary, in computing the duty payable, if the total amount of the duty computed in respect of a scheduled article or where two or more scheduled articles are imported or sold together in one consignment or lot in respect of the scheduled articles in a consignment or lot—

(a) is less than one shilling, no duty shall be charged,

(b) exceeds one shilling but is less than one hundred shillings. and includes a fraction of a shilling, the fraction shall be disregarded;

(c) exceeds one hundred shillings and includes a fraction, or a shilling, the fraction shall be regarded as a complete shilling.

(3) For the purposes of subsection (2) duty shall be computed on all the scheduled listed in a monthly return submitted in accordance with the provisions of subsection (3) of

section 18, as if all articles were sold in one consignment or lot, and the provisions of subsection (2) shall apply accordingly.

[s. 124P]

[PCh147s141]141. Determination of taxable value Act No. 8 of 1998 s. 14

(1) The excisable value of a scheduled article shall—

(a) in respect of a scheduled article imported, be the value declared and determined in accordance with the provisions of section 108 of the Customs Tariff Act * taking into account the import duty payable;

(b) in respect of a scheduled article manufactured in Mainland Tanzania be the price which in the opinion of the Commissioner is the normal price the article would fetch on a sale made by the manufacturer to a buyer at the time when the duty in respect of the scheduled article becomes due.

(2) The normal price which a scheduled article would fetch on sale made by the manufacturer to a buyer shall be taken to be the price which that article would fetch on such sale in the open market in mainland Tanzania in the ordinary course of business between a manufacturer and a buyer independent of each other, and shall be determined on the following assumptions that is to say—

(a) that the scheduled article shall be treated as having been delivered to the buyer at the manufacturer's place of business;

(b) that the buyer will bear freight, insurance and other costs, charges and expenses incidental to the sale and the delivery of the article to him;

(c) that the seller will bear any duty or tax chargeable in Mainland Tanzania other than the duty payable under this Act; and

(d) where the scheduled article is manufactured in accordance with any patent or invention or is an article to which any registered design or trade mark has been applied, that the price covers the right to use the patent, design or trade mark in respect of the article.

(3) For the purposes of subsection (2)–

(a) a sale in the open market between a manufacturer and a buyer independent of each other presupposes–

(i) that the price is the sole consideration; and

(ii) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller, associated or any person associated in any business with him (other than the relationship created by the sale of the article in question); and

(iii) that no part of the proceeds of any subsequent resale, use or disposal of the article will accrue, either directly or indirectly, to the seller or any person associated in any business with him;

(b) "trade mark" includes a trade name and getup.

(4) For the purpose of this section two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in any business or property of the other, or both have a common interest in any business or

property or some other third person has an interest in, any business or property of both of them.

(5) Where in the opinion of the Commissioner, by reason of any fraudulent act or omission of an importer, manufacturer, or a buyer, the excisable value of any article is not the same as the excisable value of a similar article imported or manufactured, as the case may be, the Commissioner may, if he considers it reasonable to do so, assess the excisable value of the article in accordance with principles as he may consider reasonable.

(6) Where, in the opinion of the Minister, it is impracticable to determine the normal price within the provisions of subsection (2), the normal price of article, shall be such as the Minister may, after consultation with the Minister responsible for trade, determine, and any such order made by the Minister shall be conclusive proof of the fact that the normal price of the article specified in the order is the price so determined by the Minister.

[s. 124Q]

[PCh147s142]142. Ascertainment of taxable value by Commissioner Act No. 8 of 1998
s. 14

Where any person is liable to pay duty under this Act in respect of any scheduled article but by reason of—

(a) his failure to keep proper accounts, records or documents required under or by virtue of this Act, or the incorrectness or inadequacy of accounts, records or documents; or

(b) his failure to make any return required under or by virtue of this Act, or delay in making any return or the incorrectness or inadequacy of any return, the Commissioner is unable to ascertain the amount of the duty properly payable by him, the Commissioner may, on such evidence as may be available to him, estimate the amount of duty due, and the estimated amount of duty shall be payable by that person.

[s. 124R]

[PCh147s143]143. Duty computed on maximum weight of a category

Where the Excise laws provide that any excisable goods shall be packed in containers according to certain categories of weight, then the Excise duties on such goods in any such container shall be computed on the maximum specified weight of the category into which such goods fall.

[s. 125]

[PCh147s144]144. Effect of alteration in excise duties

If, after any agreement has been entered into for the sale or delivery of any excisable goods at a price inclusive of excise duty, any alteration takes place in the rate or amount of excise duty so included before such duty becomes due, then, in the absence of express written provision to the contrary, the agreement shall have effect as follows—

(a) in the event of the alteration being a new or increased duty, the seller, after payment of the new or increased duty, may add the difference caused by the alteration to the agreed price;

(b) in the event of the alteration being the abolition or reduction of the duty, the purchaser may deduct the difference caused by the alteration from the agreed price;

(c) any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

[s. 126]

[PCh147s145]145. Remission, rebate and refund Act No. 11 of 1969 s. 2

(1) Notwithstanding the provisions of section 124 of this Act the Minister may—

(a) by order in the Gazette grant a remission of excise duty payable on such quantities of beer, wine and manufactured tobacco goods which are purchased, prior to delivery by the manufacturer thereof, by or on behalf of the Defence Forces of the United Republic from non-public funds for the personal use of the members of such Forces as may be specified therein;

(b) after consultation with the Minister responsible for industries, by order in the Gazette, grant remission of excise duty payable on any goods in respect of which such duty is payable under this Act, if he is satisfied that it is in the public interest so to do.

[s. 127]

[PCh147s146]146. Remission of duty Ord. No. 37 of 1959 s. 3; Act No. 47 of 1962 s.

2

(1) Notwithstanding the provisions of section 124 of this Act, the Commissioner shall remit the duty on any spirits—

(a) if he is satisfied that such spirits have been used in the manufacture of specially denatured spirits by a denaturer at the denaturer's factory, and if he is further satisfied that such specially denatured spirits have been delivered from such factory, in such quantities as he may determine, to a person, and for a purpose, approved by him;

(b) if he is satisfied that such spirits have been used by a denaturer at his factory for the manufacture of methylated spirits in accordance with the provisions of this Act;

(c) if he is satisfied that such spirits have been delivered, in such quantities as he may approve, direct from a distillery or distiller's warehouse to a person engaged in any industry or carrying on any manufacturing process and that such spirits will be used in accordance with such conditions as he may determine in any process (other than the manufacture or preparation of beverages, perfumery or toilet preparations) in which the use of spirits is required, and if he is further satisfied that the use in such process of specially denatured or methylated spirits is unsuitable or detrimental;

(d) if he is satisfied that such spirits have been delivered from a distillery or distiller's warehouse, in such quantities as he may approve, to a recognised person for medical, scientific or educational purposes, and that such spirits will be used in accordance with such conditions as he may determine; or

(e) if he is satisfied that they have been delivered to a wine manufacturer for use in the fortification of wine manufactured at his factory in accordance with the provisions of this Act.

(2) In this section "recognised person" means—

(a) a person registered or licensed under the Medical Practitioners and Dentists Act * or the Veterinary Surgeons Act *;

(b) a person registered as a pharmacist under the Pharmaceutical and Poisons Act *;

(c) a chemist possessing qualifications approved by the Commissioner in charge of a laboratory approved by the Commissioner;

(d) the curator of a public museum;

(e) the principal of an educational institution approved by the Commissioner;

(f) such other person or class of persons as the Minister may, by notice in the Gazette, approve.

[s. 128]

[PCh147s147]147. Registration of dealers Act No. 14 of 1992 s. 16

(1) Where the Commissioner is satisfied that—

(a) a person is engaged in manufacturing scheduled articles and uses, for the purpose of such manufacture any other scheduled article, whether manufactured locally or imported;

(b) any body corporate is engaged in the delivery of a scheduled article, and that it is convenient so to do,

the Commissioner may, subject to such conditions as he may determine, register such person or, as the case may be body corporate, as a registered dealer in respect of such scheduled products as the Commissioner may specify.

(2) Where any person is registered as a registered dealer in respect of any scheduled article—

(a) it shall be lawful for any person otherwise liable to pay tax under this Act, to sell to the registered dealer the scheduled article in respect of which he is so registered,

free of duties, and such person shall not be liable to pay duties due on such article imported by the registered dealer;

(b) the registered dealer may acquire the article in respect of which he is registered as a registered dealer from Customs control without payment of tax under this Act.

[s. 129]

[PCh147s148]148. Application for registration G.Ns. Nos. 152 of 1969; 152 of 1985

(1) Every application for registration as a registered dealer shall be made in the manner prescribed in the Sales Tax Regulations, and shall be submitted to the Commissioner.

(2) Upon registration of any person as a registered dealer the Commissioner shall issue such person with a certificate of registration as prescribed in the Sales Tax Regulations.

[s. 130]

[PCh147s149]149. Application of certain provisions of the Sales Tax Act

The provisions of section 18 of the Sales Tax Act, and the provisions on returns, forms, and records of the Sales Tax Regulations, shall apply mutatis mutandis to the Act.

[s. 131]

[PCh147s150]150. Definition Act No. 14 of 1992 s. 16; G.N. No. 152 of 1969

In sections 147 and 148—

"goods" means goods which are locally produced or imported which are, subject to further processing in an industry;

"industry" means any industry with an industry licence, business licence and is situated in a registered plot;

"registered dealer" means any person registered as a registered dealer under section 147 of this Act;

"registered dealer certificate" means a certificate granted to a registered dealer upon satisfaction by the Commissioner that the conditions of section 147 of this Act and regulation 8 of the Sales Tax Regulations have been fulfilled.

[s. 132]

[PCh147s151]151.-152. Omitted

[Omitted.]

[ss. 133 - 134]

FIRST SCHEDULE

DECLARATION BY OFFICER

(Section 3)

I, A.B., do declare that I will be true and faithful to the best of my knowledge and power in the execution of the trust committed to my charge and inspection in the service of the East African Customs and Excise Department and that I will not acquire, take or receive, any fee, perquisite, gratuity or reward, whether pecuniary or of any sort or description either directly or indirectly, for any service, act, duty, matter, or thing, done or to be performed or to be done or performed, in the execution of discharge of any of the

duties of my office or employment on any account, other than my salary and what is or may be, allowed to me by law or by a special order of the Authority.

SECOND SCHEDULE

TABLE FOR DETERMINING THE ORIGINAL GRAVITY OF WORTS

(Section 45)

[This Schedule has not been reproduced but is available from any office of the Department of Customs and Excise].

THIRD SCHEDULE

FORM OF WARRANT OF DISTRESS

To

I, Commissioner-General of the East African Customs and Excise Department, by virtue of the powers vested in me by section 57 of the East African Excise Management Act, do hereby authorise you to collect and recover the sum of due for excise duty from licensee, having his factory at and for the recovery thereof I further authorise that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary), which assistance they are hereby required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels or other distrainable things of the said licensee wherever the same may be found, and on all plant, vessels, vehicles, animals, and other articles used within the Partner States in the manufacture, sale, or distribution, of excisable goods which you may find in any premises

or on any lands in the use or possession of the said licensee or of any person on his behalf or in trust for him.

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

Given under my hand at this day of 20.....

.....

Commissioner-General

FOURTH SCHEDULE

(Section 124)

First Sch.

R.L. Cap. 332

[This Schedule has not been reproduced but is available from any office of the Department of Customs and Excise.]

FIFTH SCHEDULE R.L. Cap. 332 Second Sch.

[Omitted: List of certain laws repealed by section 151.]