



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
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LEGISLATION

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CUSTOMS (AMENDMENT) ORDINANCE 2010

An Ordinance to amend the Customs Ordinance 2005

J. H. GORDON
ADMINISTRATOR

4th March 2010.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title

This Ordinance may be cited as the Customs (Amendment) Ordinance 2010.

2. Interpretation

In this Ordinance, “the principal Ordinance” means the Customs Ordinance 2005(a).

3. Section 2 (Interpretation) amended

Section 2 of the principal Ordinance is amended as follows—

- (a) by repealing the definition of “associated legislation” and replacing it with the following—

““associated legislation” means any Areas legislation and any Community or UK legislation applying in the Areas which relates to the importation, exportation or movement of goods other than customs legislation;”;

- (b) by adding “baggage or” after “any” in the definition of “container”;
- (c) by repealing the definition of “Island of Cyprus”;
- (d) by inserting the following in the appropriate alphabetical place—

““judge” means a member of the Resident Judge’s court;”.

4. Section 3 (Importations and Exportations) amended

Section 3 of the principal Ordinance is amended by repealing subsection (3).

5. Section 5 (Powers and duties of Fiscal Officer and officers) amended

Section 5 of the principal Ordinance is amended as follows–

- (a) in subsections (2) and (2)(b), by repealing “customs and associated legislation” and replacing it with “customs legislation and associated legislation”; and
- (b) in subsection (2)(d), by repealing “, excise legislation”.

6. Section 7 (Examination of persons, goods and means of transport) amended

Section 7(2)(b) of the principal Ordinance is amended by repealing “customs offences and other offences in respect of assigned matters” and replacing it with “offences under customs legislation or associated legislation”.

7. Section 10 (Customs ports) amended

Section 10 of the principal Ordinance is amended by numbering the existing text as subsection (1) and inserting the following new subsection (2)–

- “(2) Designation as a customs port does not affect the use of the designated area which is for military purposes only.”

8. Section 12 (Customs airports) amended

Section 12 of the principal Ordinance is amended by numbering the existing text as subsection (1) and inserting the following new subsection (2)–

- “(2) Designation as a customs airport does not affect the use of the designated area which is for military purposes only.”

9. Section 17 (Lodging of cargo manifest on arrival of ship) amended

Section 17 of the principal Ordinance is amended as follows–

- (a) by repealing subsection (1) and replacing it with the following–
 - “(1) On arrival of a ship at a customs port or mooring within territorial waters, the following must be lodged–
 - (a) a cargo manifest; and
 - (b) any other documents prescribed by the Fiscal Officer by notice in the Gazette.”;
- (b) by repealing subsection (4) and replacing it with the following–
 - “(4) The Fiscal Officer may prescribe by notice in the Gazette in relation to the cargo manifest and any other documents required to be produced in accordance with subsection (1)–
 - (a) requirements as to form; and
 - (b) the procedures for lodging them.”; and
- (c) in subsection (6), by inserting “within 24 hours from the ship’s arrival” after “free pratique”.

10. Section 27 (Powers in relation to ships, aircraft and vehicles) amended

Section 27 of the principal Ordinance is amended by inserting the following new subsection (6)–

- “(6) If any ship or aircraft departs from any place carrying on board an officer without the consent of that officer, the master of the ship or the commander of the aircraft (as the case may be) commits an offence and is liable to imprisonment for 2 years or a fine of €3,417 or to both.”

11. Part 9 (Other Customs Debt) and Part 10 (Provisions in Relation to Customs Debt and Other Customs Debt) amended

Part 9 and Part 10 of the principal Ordinance are amended by repealing “customs” in the expression “other customs debt” wherever it appears in the Part headings, the section headings and in sections 42 to 47.

12. Section 56 (Questions of persons entering or leaving the Areas) amended

Section 56(a) of the principal Ordinance is amended by inserting “and must, if required by an officer, produce that baggage and any such thing for examination at a customs station” after “carried with him”.

13. Section 67 (Customs representation) amended

Section 67(1) of the principal Ordinance is amended by repealing “and excise and” and replacing it with “legislation or”.

14. Section 69 (Examination of imported goods and goods to be exported) amended

Section 69 of the principal Ordinance is amended by numbering the existing text as subsection (1) and inserting the following new subsection (2)–

“(2) For the purposes of subsection (1)(a), an officer may open or unpack any container or require any container to be opened or unpacked and search it or anything in it.”

15. Section 71 (Entry and search) amended

Section 71 of the principal Ordinance is amended as follows–

- (a) in subsection (1), by repealing “or associated”; and
- (b) in subsection (2), by inserting “or associated legislation” after “customs legislation”.

16. Section 72 (Search for goods liable to forfeiture etc.) amended

Section 72(2) of the principal Ordinance is amended by repealing “customs or associated legislation” and replacing it with “customs legislation or associated legislation”.

17. Section 73 (Stop and search of vehicle and ships) amended

Section 73(c) and (d) of the principal Ordinance is amended by repealing “this Ordinance” and replacing it with “customs legislation”.

18. Section 81 (Arrest without warrant) amended

Section 81 of the principal Ordinance is amended by inserting “legislation” after “customs”.

19. Section 82 (Return of property) amended

Section 82 of the principal Ordinance is amended by repealing subsection (5) and replacing it with the following–

“(5) The Fiscal Officer may dispose of any property as he sees fit unless an application under subsection (2)–

- (a) is under consideration; or
- (b) has been granted; or
- (c) is not yet out of time in accordance with subsection (4)”.

20. Section 83 (Compensation) amended

Section 83(2)(a) of the principal Ordinance is amended by repealing “a provision of customs legislation” and replacing it with “customs legislation or associated legislation”.

21. Section 85 (Falsely assuming character of Fiscal Officer, obstruction and other offences) amended

Section 85 of the principal Ordinance is amended as follows—

- (a) in subsection (5)(b), by repealing “customs or associated legislation” and replacing it with “customs legislation or associated legislation”;
- (b) in subsections (6) and (7)(b), by repealing “the customs or associated legislation” and replacing it with “customs legislation or associated legislation”;

- (c) at the end of subsection (7)(a), by inserting “or associated legislation”;
- (d) in subsection (7)(c), by repealing “this Ordinance or associated legislation” and replacing it with “customs legislation”; and
- (e) in subsection (9), by repealing “this Ordinance or under customs” and replacing it with “customs legislation”.

22. Section 86 (Fraudulent evasion of duty and other offences) amended

Section 86(2) of the principal Ordinance is amended by repealing paragraph (b) and replacing it with the following—

- “(b) of any prohibition or restriction on importation or exportation for the time being in force under any enactment with respect to the goods;
- (c) of any prohibition or restriction under Council Regulation of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession^(b) or any Commission Decision or Regulation made under that Regulation.”.

23. Section 87 (Untrue documents and declarations) amended

Section 87(1) of the principal Ordinance is amended by repealing “an assigned matter” and replacing it with “customs legislation or associated legislation”.

24. Section 89 (Failure to comply with conditions or restrictions) amended

Section 89 of the principal Ordinance is amended as follows—

- (a) in subsection (1)(b), by repealing “this Ordinance” and replacing it with “customs legislation”; and
- (b) in subsection (3), by repealing “customs or associated legislation” and replacing it with “customs legislation or associated legislation”.

25. Section 90 (Offences of failing to keep books and records) amended

Section 90(a) of the principal Ordinance is amended by repealing “this Ordinance” and replacing it with “customs legislation”.

26. Section 91 (Contravention of prohibition or restriction) amended

Section 91 of the principal Ordinance is amended by inserting “under any enactment” after “or exportation”.

27. Section 92 (Offences in relation to exportation of prohibited or restricted goods) amended

Section 92(2) of the principal Ordinance is amended by inserting “under any enactment” after “prohibition or restriction”.

28. Section 95 (Detention and seizure of goods as liable to forfeiture) amended

Section 95(1) of the principal Ordinance is amended by inserting “or associated legislation” after “customs legislation”.

29. Section 96 (Goods liable to forfeiture) amended

Section 96(1) of the principal Ordinance is amended as follows—

- (a) in paragraph (d), by repealing “the customs or associated legislation” and replacing it with “customs legislation or associated legislation”;
- (b) in paragraph (g), by inserting “or associated legislation” after “customs legislation”;
- (c) in paragraphs (h) and (i), by repealing “customs or associated legislation” and replacing it with “customs legislation or associated legislation”;
- (d) in paragraphs (j) and (k), by inserting “under any enactment” after “prohibition or restriction”; and

(e) by inserting the following paragraph (l) after paragraph (k)–

“(l) goods have been brought across the line contrary to Council Regulation of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession or any Commission Decision or Regulation made under that Regulation.”.

30. Section 102 (Reviews of decisions) amended

Section 102 of the principal Ordinance is amended as follows–

- (a) at the end of subsection (1), by inserting “or associated legislation”; and
- (b) in subsection (4), by repealing “this Ordinance or other customs or associated legislation” and replacing it with “customs legislation or associated legislation”.

31. Section 106 (Civil and criminal proceedings) amended

Section 106 of the principal Ordinance is amended by repealing “customs and associated legislation” and replacing it with “customs legislation or associated legislation”.

32. Section 108 (Valuation for the purpose of penalties) amended

Section 108 of the principal Ordinance is amended by repealing “relating to an assigned matter under the customs or the other legislation” and replacing it with “under customs legislation or associated legislation”.

33. Section 109 (Liability of directors etc) amended

Section 109(1) of the principal Ordinance is amended by repealing “relating to an assigned matter” and replacing it with “under customs legislation or associated legislation”.

34. Section 110 (Service of notices and other documents) amended

Section 110 of the principal Ordinance is amended by repealing “for the purposes of an assigned matter” and replacing it with “under customs legislation or associated legislation”.

35. Section 111 (Certificates from the Fiscal Officer) amended

Section 111 of the principal Ordinance is amended as follows–

- (a) in subsection (1), by repealing “relating to an assigned matter” and replacing it with “under customs legislation or associated legislation”;
- (b) in subsections (1)(a), (1)(e) and (1)(f), by repealing “in relation to an assigned matter” and replacing it with “under customs legislation or associated legislation”;
- (c) in subsection (1)(b), by repealing “the customs or other legislation” and replacing it with “customs legislation or associated legislation”; and
- (d) in subsection (2), by repealing “customs or associated legislation” and replacing it with “customs legislation or associated legislation”.

36. Section 115 (Proof of certain matters) amended

Section 115 of the principal Ordinance is amended by inserting “legislation” after “customs” where it appears in both subsections (1) and (2).

37. Section 116 (Documents produced to the Fiscal Officer) amended

Section 116(1) of the principal Ordinance is amended by inserting “or associated legislation” after “customs legislation”.

38. Section 117 (Further provision by regulations) amended

Section 117(a) of the principal Ordinance is amended by repealing “this Ordinance and Community legislation in relation to customs matters” and replacing it with “customs legislation and associated legislation”.

39. Section 119 repealed and replaced

Section 119 of the principal Ordinance is repealed and replaced by the following–

“119. Repeals and revocations

- (1) The enactments in Schedule 2 are repealed to the extent specified.
- (2) The Administrator may by order revoke any public instrument issued in accordance with provisions repealed by this Ordinance and which continues to have effect under section 118(1).”

40. Section 120 (Application to the Crown and commencement) amended

Section 120 of the principal Ordinance is amended by repealing subsection (3) and replacing it with the following—

- “(3) For the purposes of this section, “the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas.”

41. Schedule 1 (Provisions relating to forfeiture) amended

Schedule 1 of the principal Ordinance is amended as follows—

- (a) in paragraph 3(b), by repealing “he has no address within the Areas or”;
- (b) in paragraph 6, by repealing “Where a claimant lives or resides outside the Areas, the notice shall” and replacing it with “If the claimant intends to be represented by an advocate, the notice must”;
- (c) in paragraph 7, by repealing “or 6”;
- (d) in paragraph 11(1), by repealing “before the Registrar”;
- (e) in paragraph 15(1), by repealing “on an application to the Chief Officer made within 28 days of the decision of the court”; and
- (f) in paragraph 15, by repealing sub-paragraphs (2) and (3) and replacing them with the following—
 - “(2) If duty or tax is chargeable on the seized thing and it has not been paid, the Administration may deduct the amount of duty or tax chargeable from the amount to be paid under sub-paragraph (1).
 - (3) If the claimant brings an action on account of the seizure, detention, sale or destruction of the seized thing, the amount paid under sub-paragraph (1) must be taken into account in any award of compensation.”

42. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Notes

(a) Ordinance 16/05.

(b) Council Regulation (EC) No 866/2004 OJ L 206, 9.6.2004, p.51.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Customs (Amendment) Ordinance 2010 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance amends the Customs Ordinance 2005 (“the 2005 Ordinance”) in order to ensure that the defined terms “customs legislation”, “associated legislation” and “assigned matter” are used in a consistent manner. It also adjusts the definition of “associated legislation” in order to ensure that relevant EU legislation is covered by it. The definition of “Island of Cyprus” is repealed because it is unnecessary and a definition of “judge” is added.

4. A new subsection has been added to sections 10 and 12 of the 2005 Ordinance in order to make clear that customs ports and customs airports are used for military purposes only.

5. Section 17(1) of the 2005 Ordinance, which is the requirement to lodge a cargo manifest, has had added to it a power allowing the Fiscal Officer to prescribe other documents that have to be lodged on arrival. Section 17(4) has been replaced in order to provide that the procedures for lodging the cargo manifest which may be prescribed by the Fiscal Officer apply also to other documents that have to be lodged. This provides the means for an equivalent procedure on arrivals to that which may be prescribed for obtaining clearance outwards on departure under section 22(3).

6. Section 17(6) of the 2005 Ordinance, which relieves the master of a ship of the duty to comply with section 17 when the ship departs without free pratique, has been clarified. “Free pratique” means a clean bill of health and the amendment means that the master of a ship is only relieved of the duty to comply with section 17 when the ship departs within 24 hours of arrival.

7. Section 8 of the Ordinance adds a new subsection (6) to section 27 of the 2005 Ordinance. This creates a new offence of carrying an officer away by ship or aircraft without the consent of that officer.

8. The search powers of customs officers in relation to baggage entering or leaving the Areas have been amended. A search power has been added to the power to question a person entering or leaving the Areas in section 56 of the 2005 Ordinance. Section 69 of the 2005 Ordinance has been amended to allow customs officers to open and unpack containers themselves, should they think it necessary, rather than insisting that it is done by the proprietor of the goods. A consequential amendment to the definition of “container” in section 2 of the 2005 Ordinance has been made.

9. Amendments have been made to section 86(2) and section 96(1) of the 2005 Ordinance to make express provision for the EU Regulation known as the green line Regulation. The amendments clarify that evading a prohibition or restriction in the green line Regulation is a criminal offence and goods brought across the line (which is defined in the 2005 Ordinance) contrary to the green line Regulation are liable to forfeiture.

10. Section 119 of the 2005 Ordinance has been repealed and replaced in order to provide an express power to revoke public instruments made under an Ordinance repealed by the 2005 Ordinance.

11. Section 120 of the 2005 Ordinance has been amended so that the 2005 Ordinance applies to the UK Government in the same way that it applies to the SBA Administration.

12. The Ordinance also makes the following changes to the provisions relating to forfeiture at Schedule 1:

- (a) It removes the option of publishing a notice of seizure in the Gazette in paragraph 3(b) where the owner of the thing seized has no address within the Areas.
- (b) The requirement to specify details of an advocate in paragraph 6 now only applies if the claimant intends to instruct an advocate and it applies to everyone and not just those living outside the Areas. A consequential deletion of a reference to paragraph 6 is made to paragraph 7.

- (c) The requirement to make a statement on oath “before the Registrar” about ownership of goods is removed. The effect is that the claimant still has to make a statement on oath but it can be taken before anyone qualified to take oaths.
- (d) The procedure in paragraph 15 to be followed where goods are found to be not liable to forfeiture is amended. In particular, the requirement to make an application to the Chief Officer for a payment where the goods are no longer available to be returned is removed. Paragraph 15 has also been amended where such a payment is made so that it is to be taken into account in any legal action relating to the seized goods rather than precluding such a legal action altogether.