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**C U S T O M S ( A M E N D M E N T ) O R D I N A N C E 2 0 1 6**

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An Ordinance to amend the Customs Ordinance 2005

**M. Wigston**  
**ADMINISTRATOR**

*04 March 2014*

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

**Short title**

1. This Ordinance may be cited as the Customs (Amendment) Ordinance 2016.

**Commencement**

2. This Ordinance comes into force on 1 May 2016.

**Amendment of the Customs Ordinance 2005**

3. The Customs Ordinance 2005(a) is amended as follows.

**Amendment of section 74**

4. In section 74(b) (search of persons) for subsections (2) to (4) substitute—

“(2) The officer may require the suspect—

- (a) to permit a search of any article which is with the suspect as the officer considers necessary or expedient; and

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(a) Ordinance 16/2005.

(b) Section 74 was amended by Ordinance 33/13.

- (b) subject to the following provisions of this section, to submit to such searches of the suspect's person as the officer considers necessary or expedient.
- (3) No requirement may be imposed under subsection (2)(b) without the officer first informing the suspect of the effect of subsections (4) and (5).
- (4) If the suspect is required to submit to a search of his person, the suspect may require to be taken as soon as practicable before a superior of the officer concerned.
- (5) In the cases referred to in subsection (4), the superior shall consider the grounds for suspicion and direct accordingly whether the suspect must submit to the search.
- (6) A rub-down or strip search shall not be carried out except by a person of the same sex as the suspect.
- (7) This section does not authorise any person to carry out an intimate search (but see section 81(5)(c) for power to carry out an intimate search of an arrested person)."

**Amendment of section 75**

- 5. In subsection (2) of section 75 (application and definitions of section 74)—
  - (a) for the definition of “intimate search” substitute—
    - ““intimate search” means a search which consists of the physical examination of any of a person's body orifices other than the mouth;”;
    - and
  - (b) omit the definition of “suitably qualified person”.

**Amendment of section 78**

- 6. In section 78 (powers in relation to search) for “the procedures in section 74(3) and (4)” substitute “section 74(3) to (7)”.

**Substitution of section 81**

- 7. For section 81(a) (arrest without warrant) substitute—

**“Arrest without warrant**

- 81.—(1) An officer may, without warrant, arrest a person in the following circumstances—
  - (a) if the person is, or the officer reasonably suspects the person to be, committing or attempting to commit an offence under the customs legislation or associated legislation punishable by imprisonment;
  - (b) if the person obstructs the officer in the execution of the officer's duty;
  - (c) if the officer has reasonable grounds for believing that the person has escaped from or is attempting to escape from lawful custody;
  - (d) if the officer has reasonable grounds for believing that a warrant of arrest in respect of the person has been issued.
- (2) Subsection (1) does not limit a power of arrest in any other Ordinance.
- (3) The arrested person—
  - (a) may be detained at a customs station for a period of up to six hours for the purpose of investigating the offence; and
  - (b) must, unless released, be delivered within that period to a police station or into the custody of a police officer for delivery to a police station.

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(a) Section 81 was substituted by Ordinance 30/2012.

(4) The arrested person must be detained or released by the police in accordance with section 23 of the Criminal Procedure Ordinance 2016 (arrest without warrant: disposal of persons arrested)(a) as if the arrest by the customs officer had been an arrest without a warrant by a police officer, without the need for any second arrest; and for the purposes of that Ordinance, the arrest must be treated as having been made at the time the person was arrested by the officer under this section (see also subsection (5)(d)).

(5) The following provisions of the Criminal Procedure Ordinance 2016 apply in relation to an arrest made, or to the power of arrest, under this section—

- (a) section 16 (arrest) applies as if any reference to a police officer were a reference to an officer;
- (b) section 17 (search of arrested person) applies as if any reference to a police officer were a reference to an officer;
- (c) section 18 (intimate search of arrested person) applies as if any reference to a police officer of at least the rank of inspector were a reference to the Fiscal Officer or any officer designated for such purposes by the Fiscal Officer;
- (d) section 23 (arrest without warrant: disposal of persons arrested) applies as if—
  - (i) the reference in subsection (1) to a police officer were a reference to an officer; and
  - (ii) any function conferred on the officer in charge of the police station were conferred—
    - (aa) after consulting the officer in charge of the police station, on the relevant officer; or
    - (ab) after consulting the relevant officer, on the officer in charge of the police station;
- (e) section 30 (power to remand in police custody, etc) applies as if the reference in subsection (3) to a police officer of the rank of inspector or above were to either—
  - (i) the relevant officer;
  - (ii) a person acting on behalf of the relevant officer; or
  - (iii) a police officer of the rank of inspector or above.

(5) In this section “relevant officer” means the officer who made the arrest or any other officer nominated by the Fiscal Officer.”.

#### **Amendment of section 95**

**8.** In subsection (7) of section 95 (detention and seizure of goods as liable to forfeiture) for “section 170 of the Criminal Procedure Ordinance” substitute “section 176 of the Criminal Procedure Ordinance 2016 (disposal of property in possession of police)”.

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(a) Ordinance 9/2016.

## **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

1. This explanatory note relates to the Customs (Amendment) Ordinance 2016 (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 Ordinance amends the Customs Ordinance 2005 (“the 2005 Ordinance”). It amends sections 74, 75 and 78 to amend the power of a customs officer to perform a search on a person.
3. It replaces section 81 of the 2005 Ordinance. This amends the scope of the power of a customs officer to arrest a person without warrant, and amends the process which must be followed after such an arrest. It also replicates, insofar as it relates to customs officers, the provisions of the Criminal Procedure (Customs and Immigration) Ordinance 2013, which is repealed by the Criminal Procedure Ordinance 2016.
4. The Ordinance also updates other old references to repealed legislation in the 2005 Ordinance, by replacing them with references to provisions of the Criminal Procedure Ordinance 2016.

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