



CUSTOMS AND EXCISE BILL 2013

(BILL NO. ... OF 2013)

EXPLANATORY MEMORANDUM

THIS IS A DRAFT FOR PUBLIC CONSULTATION ONLY

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1.0 INTRODUCTION This memorandum related to the Customs and Excise Bill 2013. The Bill is intended to repeal the current Customs and Excise Act (Cap. 121) and the Customs Valuation Act 2009 and replace them with a comprehensive, modern customs and excise law drawing on international and regional best practice.

2.0 CLAUSES/CHAPTERS

2.1 CHAPTER 1 (*Preliminary*) – Deals with preliminary provisions. It provides that the Act binds the Crown but does not make the Crown liable to a penalty or prosecution. It provides for different commencement dates for the various provisions of the Bill. It sets out a number of definitions and other interpretation provisions that are required for the proper operation of the Bill.

2.2 CHAPTER 2 (*Prohibited imports and exports*) Chapter 2 provides for the regulations to list prohibited imports and exports. It expressly provides that imports and exports may be prohibited conditionally. It also includes associated offences, such as for the possession of prohibited imports, the sale of prohibited imports within the Solomon Islands, constructing craft to conceal goods from Customs and packing goods to conceal them from Customs.

2.3 CHAPTER 3 (*Border control*) This Chapter establishes reporting requirements so that Customs will have timely warning of arrivals. This assists Customs in implementing a risk management approach to its border control functions, to help facilitate trade by allowing Customs to focus on riskier cargo and passengers (cargo or persons), thus speeding up the process of in particular getting cargo through the Customs barrier.

The Chapter provides for Customs powers to question, or give directions to, operators and captains, and persons who give arrival reports, about the contents of those reports.

The Chapter provides powers for Customs in relation to craft on international journeys coming to or leaving Solomon Islands. It distinguishes between powers that Customs can exercise in the

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economic exclusion zone (**EEZ**) and within the territorial seas. Generally speaking, Customs powers in the EEZ cannot improperly interfere with rights of free passage afforded under international law to craft outside territorial seas. It also provides for Customs powers to stop, board and search craft in these areas, to give appropriate directions, ask questions and, in limited cases, detain craft. Detention beyond 48 hours must be authorised by a warrant issued by a judicial officer.

The Chapter requires craft coming to Solomon Islands to come directly to Customs ports or Customs airports.

This Chapter requires anyone arriving in Solomon Islands to present themselves to Customs immediately in Customs areas (special provision is made for transit travellers). Customs has powers to question persons in Customs areas and give directions, including directions to produce baggage and goods for search and inspection.

The Chapter regulates craft leaving Solomon Islands by requiring them to have outward clearance from Customs. There are associated controls to prevent goods being loaded or unloaded unless disclosed to Customs through the outwards manifest, which form the basis of an outwards clearance application.

Finally, the Chapter institutes a system of cruising permits for yachts and small craft that arrive in Solomon Islands. The cruising permit scheme allows for Customs to give a cruising permit authorising the craft to travel around Solomon Islands on a specified itinerary.

- 2.4 CHAPTER 4 (*Customs controlled goods*) The concept of customs controlled goods is fundamental to Customs; border protection functions. Imported goods will be under customs control until they are exported or released for home consumption. While under customs control they may not be moved, altered or interfered with without Customs authority. Similar arrangements apply to goods for export.

This Chapter establishes the system of customs control for imported goods and goods for export. It defines clearly when goods are under customs control. It makes detailed provision about travellers' baggage, and how it is examined and released, crew's possessions, ships' and aircraft's stores, the mail (for which special arrangements have to be made) and, most significantly, for imported cargo and cargo for export. For these, detailed reporting requirements are imposed so that

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Customs can “track” cargo until it is released into home consumption or exported.

The Chapter also describes the extensive powers that Customs has so that it can manage goods under customs control, and examine and test them to verify their status and relevant duty liabilities.

- 2.5 CHAPTER 5 (*The excise*) The Chapter sets to out the main provisions governing excise, which is, in short, a tax on local manufacture. Only a small range of products are subject to excise.

The Chapter provides for regulations to define what goods are subject to excise (Chapter 6 provides for regulation to fix rates of excise, and exemptions). It creates the core offences of manufacturing excisable goods without a licence (under Chapter 8) and gives Customs powers to verify the production processes as required.

It establishes a regime of excise controlled goods similar to the regime for customs controlled goods. Excise controlled good are excisable goods that have not yet been exported or released into home consumption.

- 2.6 CHAPTER 6 (*Duties*) This Chapter makes comprehensive and detailed provision for the imposition and collection of import duties, export duties and excise duties. It provides that these duties are imposed through tariffs, made by regulations. This means that the regulations, as subordinate legislation, are subject to Parliamentary scrutiny and annulment.

The Chapter reproduces the Customs Valuation Act 2009, which provides a WTO compliant method for valuing goods for import duty purposes. The Chapter extends these provisions to valuing goods for export duty purposes. It makes special provision for imported goods that are the produce of manufacturer of a Melanesian Spearhead Group Trade Agreement country (as required by the Melanesian MSG Trade Agreement).

The Chapter provides for a number of methods of prescribing exemptions from duties. It provides that the regulations may prescribe exemptions, and current exemptions will, for the most part, be reproduced in regulations. It also recognises that exemptions may be granted under other legislation.

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[Provisions in respect of the Exemptions Committee, and its powers and functions in relation to discretionary duty exemptions]

The Chapter contains mechanical provisions for collecting duty, including penalty duty for late payment, and deals with the extent to which statutory bodies will be liable to duty.

The Chapter provides a comprehensive set of provisions for entitlements to refunds and remissions.

The Chapter provides for a system of Customs rulings on duty matters, to enable importers and exporters to have certainty as to how particular transaction or series of transaction will be treated for import or export duty purposes.

Finally, the Chapter provides for a series of offences in relation to duty, including for giving false or misleading information about duty to Customs, and serious offences to replace the old “smuggling” offences.

2.7 CHAPTER 7 (*Entry and release*) This Chapter sets out the mechanism for entry of goods (for home consumption, for warehousing, for transshipment or for export). In most cases goods will not be able to be moved into home consumption without being entered for home consumption and duty paid. There are a number of cases where Customs will be able to release goods without entry (in particular, low value goods).

2.2 CHAPTER 8 (*Licensing*) This Chapter sets out comprehensive schemes for licensing warehouses, excise manufacturers, bond stores and similar places, and for licensing clearing agents.

The provisions provide for applications for licences, the conditions under which licences can be granted, review of licensing decisions and suspension and cancellation of licences. The Chapter contemplates further provisions being made by rules about duty free shops, when the need for these rules arises.

The principal criteria for granting a warehouse similar licence is that the proposed licensee, and the operations under the licence, will have adequate systems and processes to reduce the risks of a breach of the Act and leakage of revenue. The principal criterion for licensing

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clearing agents is that they have a sound knowledge of Customs law administration. In both cases, a “fit and proper person” requirement will apply.

- 2.9 CHAPTER 9 (*Keeping documents*) Chapter 9 makes general provision about keeping documents, including requiring that documents that be kept in the Solomon Islands.
- 2.10 CHAPTER 10 (*Customs powers*) Chapter 10 is a comprehensive statement of Customs powers under the Act. The various provisions of the Bill that confer powers on Customs “call up” these Chapter 10 provisions.

The principal powers are—

- power to question—however, except in specified circumstances, the person is not required to answer a question from Customs when it would tend to incriminate;
- powers to give directions to persons;
- powers to enter and search premises, including, in particular cases, under warrant;
- powers to examine and test goods;
- powers to secure places.

The Chapter makes express provision for *post clearance auditing*, that is, auditing by Customs of importers and excise manufacturers whose goods have been released into home consumption without full examination.

The Chapter includes detailed provisions for forfeiting goods, detaining and seizing them and condemning them, as well as the way in which forfeited or condemned goods can be sold, disposed of or destroyed.

The Chapter confirms Customs power to require and take securities for the protection of the revenue, for example, in the context of licensing a warehouse or bond store.

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The Chapter sets out strict rules in relation to personal searches by Customs officers, including at the airport, and detaining them for the purpose of questioning or search.

The Chapter permits Customs officers to arrest persons without warrant in particular circumstances and makes provision for warrants generally.

- 2.11 CHAPTER 11 (*Enforcement*) This Chapter deals with a range of issues surrounding enforcement of the Bill. It deals with the application of the general criminal law to offences under the Bill. Many of the offences in the Bill are offences of strict liability (that is, the prosecution does not have to prove “*mens rea*” or fault). The Bill explains carefully what this means and deals with the availability of the general law defences of mistake of fact, impossibility and emergency in these cases.

A number of key offences in the Bill (particularly the importing and exporting offences) are structured so that there is a “less serious” offence (a strict liability offence) and a more serious offence, which is available where knowledge, intention or recklessness can be proved. The Bill provides for alternative verdicts where a person prosecuted for the more serious offence cannot be found guilty of that offence but can be found guilty of the less serious offence.

The Bill also provides clear rules for attributing the acts of directors, employees etc to their employer bodies corporates for the purposes of criminal liability, and a general defence to a prosecution of a body corporate that it took “reasonable precautions and due diligence” to prevent the offence occurring.

This Chapter establishes two administrative penalty schemes, an *infringement notice* scheme and an *administrative penalty scheme*, for dealing with offences without court proceedings. Each scheme will be established in due course. The infringement notice scheme is intended for low risk offences. The administrative penalties scheme covers only entries that are materially incorrect. In each case Customs will serve a notice on the person concerned imposing the penalty (which will be less than the penalty that a court might impose for the offence concerned). If the person pays the penalty, the person will no longer be liable to prosecution for the matters the subject of the notice. However, if the person does not pay the penalty, Customs’ rights to prosecute the person remain.

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- 2.12 CHAPTER 12 (*Review of Customs and excise decisions*) This Chapter establishes a two tier review scheme for administrative decisions by Customs. For duty related decisions, because of the lack of general expertise on tariff and related matters in the Solomon Islands business community, the Comptroller will be the review authority. Decisions on these matters will therefore be taken by less senior officers in Customs.

For other decisions that are reviewable, a small panel is established. Its members will conduct reviews of these decisions on application.

In all cases an appeal to the High Court will be available.

- 2.13 CHAPTER 13 (*Administration*) This Chapter formalises the structure of Customs (the Comptroller and the Deputy Comptrollers) and provides for a number of administrative matters. It also provides for the formal identification, through rules, of Customs ports, Customs wharves, boarding stations and Customs airports and provides for other Customs areas. The Chapter makes a number of mechanical provisions about the way in which Customs authorities are given and notices to and from Customs.

Anticipating the establishment of improved computer facilities for Customs, the Chapter establishes a regime for approval of Customs computer systems and registration of users of approved computer systems. The registration process is similar to the licensing processes for warehouses and Customs agents.

Finally, the Chapter establishes a clear official secrecy regime.

- 2.14 CHAPTER 14 (*Miscellaneous*) This Chapter makes various miscellaneous, including authorising the Minister to make regulations and the Comptroller to make rules to give effect to the Bill.
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