

IMPORT AND EXPORT ORDINANCE 1970.**ARRANGEMENT OF SECTIONS.**

<i>Section.</i>		<i>Page.</i>
PART I.		
PRELIMINARY.		
1.	Short title and commencement	A349
2.	Interpretation	A349
PART II.		
ADMINISTRATIVE DECISIONS AND APPEALS.		
3.	Director's discretion to issue, cancel, revoke or suspend licences	A352
4.	Power of Director to appoint authorized officers	A353
5.	Director and other public officers to be subject to the Governor's directions	A353
6.	Appeals to the Governor	A354
PART III.		
PROHIBITED ARTICLES.		
7.	Possession of prohibited article after import	A354
8.	Delivery of import licence and manifest to the Director	A354
9.	Delivery of import licence and manifest in the case of part shipments	A355
10.	Carriers prohibited from accepting prohibited articles for export without licence	A356
11.	Delivery of export licence and manifest to the Director	A356
12.	Inspection and storage of prohibited articles	A356
13.	Claim and disposal of prohibited articles found without owner	A357
PART IV.		
UNMANIFESTED CARGO AND SMUGGLING.		
14.	Alteration of vessel, aircraft or vehicle for the purpose of smuggling	A358
15.	Duty to provide particulars of all cargo	A359
16.	Prohibition against unauthorized placing of cargo on vessels, etc.	A359
17.	All cargo to be recorded in manifests	A359
18.	Offence of importing or exporting unmanifested cargo	A360
19.	Written list showing ports of call to be furnished to the Director	A360

Section.

PART V.

Page.

POWERS OF INVESTIGATION.

20.	General powers of members of Preventive Service, etc.	A360
21.	Special powers of members of the Preventive Service, etc.	A361
22.	Restrictions upon exercise of special powers of members of the Preventive Service, etc.	A362
23.	Powers of arrest of authorized officers and members of the Preventive Service	A363
24.	Ancillary powers of investigation of suspected offence	A364
25.	Locks and seals on premises, vessels, etc.	A365
26.	Obstruction of members of the Preventive Service, etc.	A365

PART VI.

FORFEITURE.

27.	Seized articles, etc. liable to forfeiture	A366
28.	Determination by magistrate of applications for forfeiture	A367
29.	Power to release seized vessels and vehicles prior to the hearing	A369
30.	Claims for the return of forfeited articles, etc.	A369

PART VII.

REGULATIONS.

31.	Power to make regulations	A370
32.	Power to levy by resolution of Legislative Council	A373

PART VIII.

MISCELLANEOUS.

33.	Evidentiary provisions	A373
34.	Onus of proof in court proceedings	A374
35.	Application of Ordinance to postal packets	A375
36.	Offences in respect of licences	A375
37.	Time limitation for criminal proceedings	A376
38.	Informers	A376
39.	Amendment of Schedule	A376
40.	Repeals	A376
Schedule	A376

HONG KONG

No. 67 OF 1970.

*Ordinance not disallowed —
see G.N. 1459/70.*

L.S.

I assent.

D. C. C. TRENCH,
Governor.

18th June, 1970.

An Ordinance to provide for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, and any matter incidental to or connected with the foregoing.

*[1st January, 1971]**L.N. 189/71.*

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Import and Export Ordinance 1970, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“air consignment note” and “air waybill” mean any document which—

(a) bears the signature of the owner, operator, charterer, authorized agent or commander of an aircraft; and

(b) records particulars of a contract for the consignment of cargo in an aircraft;

“aircraft” means any machine which can derive support in the atmosphere from reactions of the air;

“article in transit” means an article which—

(a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and

(b) remains at all times in or on the vessel, aircraft or vehicle in or on which it is brought into Hong Kong

“authorized officer” means a person authorized by the Director under section 4;

“bill of lading” means any document which—

(a) bears the signature of—

(i) the owner, charterer, agent or master of a ship; or

(ii) the owner, hirer or person in charge of a vehicle; and

(b) records particulars of a contract for the consignment of cargo in a vessel or vehicle;

“cargo” means any article which is imported or exported other than—

(a) the necessary equipment, stores or fuel of the vessel, aircraft or vehicle in or on which the article is imported or exported;

(b) food and other provisions reasonably required for consumption by the crew or passengers of such vessel, aircraft or vehicle;

(c) items of personal property reasonably required for the personal use of the crew or passengers of such vessel, aircraft or vehicle; and

(d) any document relating to—

(i) the carriage of cargo in or on such vessel, aircraft or vehicle; or

(ii) the inter-office business transactions of the owner of such vessel, aircraft or vehicle;

“commander” means, in respect of an aircraft, the member of the flight crew designated as commander of the aircraft by the operator thereof or, if no member of the flight crew is so designated, the person for the time being in command of the aircraft;

“consign” means to deliver or transmit an article into the custody of a person for the purpose of delivery or transmission of the article by that person to another specified person;

“contraband” means an article which is exported, imported or otherwise dealt with contrary to the provisions of this Ordinance or any other law controlling the import or export of any article;

“Director” means—

- (a) the Director of Commerce and Industry;
- (b) except where the expression “Director of Commerce and Industry” is used, any Deputy or Assistant Director of Commerce and Industry; and
- (c) the Commissioner of the Preventive Service and any Deputy or Assistant Commissioner of the Preventive Service;

“domestic premises” means any premises or place used exclusively for residential purposes and constituting a separate household unit;

“export” means to take, or cause to be taken, out of Hong Kong any article other than an article in transit;

“import” means to bring, or cause to be brought, into Hong Kong any article other than an article in transit;

“licence” means a licence, certificate, authorization or permit issued under the provisions of this Ordinance;

“manifest” means a document which records or purports to record such particulars of the consignment of cargo in or on any vessel, aircraft or vehicle as may be prescribed by the Director of Commerce and Industry under section 17;

“master” means, in respect of a vessel, the person (except a pilot) having for the time being command or charge of the vessel;

“member of the Preventive Service” means any person holding an office specified in the First Schedule to the Preventive Service Ordinance;

(Cap. 342.)

“owner” means, other than for the purposes of Part VI—

- (a) in respect of an article, any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the article; and

- (b) in respect of a vessel, aircraft or vehicle—

- (i) the registered owner and any person holding himself out to be the owner thereof;

- (ii) any person acting as agent for the owner in connexion with the handling of cargo carried in or on the vessel, aircraft or vehicle;

(iii) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and

(iv) any person having for the time being the control or management of the vessel, aircraft or vehicle;

“prohibited article” means any article—

- (a) the import or export of which is prohibited under the provisions of this Ordinance;
- (b) the import or export of which is permitted subject to the terms and conditions of a licence; or
- (c) the import or export of which is prohibited or controlled under any other law;

“smuggling” means importing, exporting, unshipping, shipping, landing, loading, conveying or otherwise dealing with any article contrary to the provisions of this Ordinance or any other law controlling the import or export of any article;

“unmanifested cargo” means any cargo which is not recorded in a manifest;

“vehicle” means every means of conveyance or of transit or other mobile apparatus used or capable of being used on land, whether on roads or rails and, in any way whatever, drawn or propelled or carried;

“vessel” includes every description of vessel used in navigation for the carriage of persons or articles, whether or not the vessel is mechanically propelled and whether or not the vessel is towed or pushed by another vessel.

PART II.

ADMINISTRATIVE DECISIONS AND APPEALS.

Director's discretion to issue, cancel, revoke or suspend licences.

3. (1) The Director may issue any licence required under this Ordinance and may attach thereto such conditions as he may see fit to impose.

(2) Subject to subsection (3) the Director may cancel, revoke or suspend any licence issued by him under this Ordinance.

(3) The Director shall not cancel, revoke or suspend any such licence where he is satisfied that the holder thereof has entered into an irrevocable commitment pursuant to the issue to him of such licence, unless the article in respect of which the licence was issued is a strategic commodity specified in regula-

tions made under this Ordinance and it is, in the opinion of the Director, necessary for him to cancel, revoke or suspend the licence in the public interest.

(4) Notwithstanding subsection (3), if the Director is satisfied that any licence was issued by him as the result of fraudulent misrepresentation of any fact or any other unlawful act by the applicant therefor he may, at any time, cancel, revoke or suspend the licence.

(5) Every licence cancelled, revoked or suspended by the Director and all copies thereof in the possession of the licensee or any other person shall be surrendered immediately to the Director by the licensee.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months.

(7) The Director may serve notice of the cancellation, revocation or suspension of any licence on the holder thereof and such person shall be deemed to be served with the notice if it—

- (a) is delivered to the holder or applicant personally; or
- (b) is addressed to him and left at or forwarded by registered mail to him at his usual or last known place of abode or business.

(8) Except where the form of a licence is, under the provisions of this Ordinance, required to be prescribed, the Director may determine the form of any licence and of any application therefor.

(9) The Director may delegate any of the powers and duties conferred or imposed on him by this section to any authorized officer.

4. The Director may authorize in writing any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

Power of Director to appoint authorized officers.

5. (1) The Governor may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Director or any other public officer, other than a judge, a District Judge or a magistrate, of any powers, functions or duties under this Ordinance.

Director and other public officers to be subject to the Governor's directions.

(2) The Director and every public officer shall, in the exercise or performance of any powers, functions or duties under this Ordinance, comply with any directions given by the Governor under subsection (1).

Appeals to the Governor.

6. (1) Any person aggrieved by a decision, act or omission of the Director or of any other public officer, other than a judge, a District Judge or a magistrate, taken, done or made in the exercise of any powers or the performance of any duties under this Ordinance may, within fourteen days from the date when he was informed of the decision, act or omission or when the decision, act or omission became known to him (whichever is the later) or within such further period as the Governor may allow in any particular case, by notice in writing lodge an objection to the decision, act or omission with the Colonial Secretary.

(2) On consideration of an objection lodged in accordance with subsection (1), the Governor may confirm, vary or reverse the decision, act or omission of the Director or other public officer, or substitute therefor such other decision or make such other order as he may think fit.

(3) Nothing in this section shall entitle any person to lodge an objection under this section to any decision, act or omission of the Governor or of any court.

PART III.

PROHIBITED ARTICLES.

7. (1) The owner of any vessel, aircraft or vehicle in or on which any prohibited article is imported shall retain possession of the prohibited article until—

(a) in the case where the import of the prohibited article is permitted subject to the terms and conditions of a licence, there is produced to him a valid import licence issued under this Ordinance or under some other law in respect of the prohibited article; or

(b) in any other case, the Director gives to the owner of the vessel, aircraft or vehicle written directions in respect of the removal or storage of the prohibited article.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of fifty thousand dollars and to imprisonment for one year.

(3) It shall be a defence to a charge under paragraph (a) of subsection (1) if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

8. (1) Subject to section 9, a person to whom an import licence has been issued under this Ordinance shall present the licence to the owner of the vessel, aircraft or vehicle in or on

Possession of prohibited article after import.

Delivery of import licence and manifest to the Director.

which the article is imported within seven days after the article was imported.

(2) On presentation of an import licence pursuant to subsection (1), the owner of the vessel, aircraft or vehicle in or on which the article has been imported—

- (a) may release the article to the consignee, if he is satisfied that he is not prohibited from doing so under any condition of the import licence; and
- (b) shall, within seven days after receiving the import licence, deliver it to the Director together with a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported, duly certified by him as a true copy or extract of the manifest.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars.

9. (1) If an article which is imported forms part only of a consignment of articles in respect of which an import licence has been issued under this Ordinance, the person to whom the licence was issued shall present—

- (a) the import licence endorsed by him to this effect; and
- (b) a written declaration signed by him stating that the article which has been imported forms part only of a consignment of articles in respect of which the licence was issued,

to the owner of the vessel, aircraft or vehicle in or on which the article was imported within seven days after the article was imported.

(2) The owner of the vessel, aircraft or vehicle, on receiving from a licensee an endorsed import licence and written declaration pursuant to subsection (1)—

- (a) may release the article to the consignee, if he is satisfied that he is not prohibited from doing so under any condition of the import licence; and
- (b) shall, within seven days after receiving the import licence and written declaration—

(i) endorse the licence and return it to the person to whom it was issued; and

(ii) deliver the written declaration to the Director together with a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported, duly certified by him as a true copy or extract of the manifest.

Delivery of import licence and manifest in the case of part shipments.

(3) The written declaration referred to in subsections (1) and (2) shall be made in such form as the Director may specify from time to time.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars.

Carriers prohibited from accepting prohibited articles for export without licence.

10. (1) The owner of a vessel, aircraft or vehicle shall not accept any prohibited article for export on the vessel, aircraft or vehicle until there is produced to him an export licence issued under this Ordinance or some other law in respect of the prohibited article.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of fifty thousand dollars and to imprisonment for one year.

(3) It shall be a defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

Delivery of export licence and manifest to the Director.

11. (1) When a licence has been issued under this Ordinance for the export of an article, the owner of the article shall, before it is exported, deliver the licence to the owner of the vessel, aircraft or vehicle in or on which he intends to export it.

(2) The owner of the vessel, aircraft or vehicle in or on which an article in respect of which an export licence has been issued under this Ordinance is exported shall, within fourteen days after the day on which the article is exported, deliver the export licence to the Director, together with a certified copy or certified extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars.

Inspection and storage of prohibited articles.

12. (1) For the purpose of determining whether or not an article which—

(a) has been imported within the period of six months preceding the date when a request is made under this subsection for the production of the same; or

(b) is intended to be exported,

is a prohibited article, the person in possession or control of the article shall, if required to do so by the Director, an authorized

officer or member of the Preventive Service of or above the rank of Revenue Sub-Inspector, produce it for inspection by the Director, an authorized officer or such member of the Preventive Service.

(2) The Director, any authorized officer or a member of the Preventive Service of or above the rank of Revenue Sub-Inspector shall determine whether or not any article produced to him for inspection under subsection (1) is a prohibited article.

(3) The person in possession or control of a prohibited article shall, if required to do so by the Director or an authorized officer, cause such article to be stored in a place specified by the Director or authorized officer under such conditions as he may impose.

(4) An article stored in a specified place in accordance with the directions of the Director or authorized officer under subsection (3) shall not be removed from that place unless the Director or an authorized officer has authorized in writing the removal of the article.

(5) Any person authorized in writing under subsection (4) to remove an article from a specified place shall comply with such conditions as may be imposed by the Director or authorized officer on the removal of the article.

(6) Any person who contravenes subsection (1), (3), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

13. (1) The Director or any authorized officer may order that any prohibited article which is found without an apparent owner shall be stored in a place specified by him subject to such conditions as he may impose.

(2) Any person who, being in possession of a prohibited article which is found without an apparent owner, fails to comply with an order given by the Director or an authorized officer under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(3) Where a prohibited article is stored in a specified place pursuant to an order given under subsection (1), the Director or an authorized officer shall, within the period of seventy-two hours after the prohibited article has been stored in that place, cause a notice to be exhibited at the Commerce and Industry Department in a place to which the public have access—

(a) stating that the prohibited article has been stored in that place;

Claim and disposal of prohibited articles found without owner.

- (b) calling upon the owner of the prohibited article to submit to the Director a claim in respect of it within thirty days; and
- (c) stating his intention to apply to a magistrate at the expiration of thirty days from the date of the notice for an order that the prohibited article be forfeited to the Crown.

(4) When a claim to ownership of a prohibited article is submitted to the Director pursuant to a notice given under subsection (3), the claimant shall produce to the Director or an authorized officer such evidence as to his ownership as may be required by the Director or authorized officer.

(5) Without prejudice to any provision of this Ordinance relating to the seizure of any article which is liable to forfeiture, the Director or an authorized officer may, if he is satisfied of the validity of a claim made under subsection (4), authorize in writing the claimant to remove the prohibited article from the place in which it was stored, subject to the prior payment by the claimant of all storage and other charges which have accrued in respect of the storage of the article in the specified place.

(6) A magistrate shall, if satisfied that the provisions of this section have been complied with and that no claim to ownership has been established, on the application of the Director or an authorized officer, order that a prohibited article be forfeited to the Crown.

PART IV.

UNMANIFESTED CARGO AND SMUGGLING.

14. (1) Any person who alters the fittings, fabric or structure of any vessel, aircraft or vehicle for the purpose of smuggling any article into or out of Hong Kong shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) If—

- (a) the Director, any authorized officer or any member of the Preventive Service reasonably suspects that any vessel, aircraft or vehicle has been used or is intended to be used for the purpose of smuggling; and
- (b) the vessel, aircraft or vehicle is found in Hong Kong to have—

- (i) any false bulkhead, bow, side or bottom;
- (ii) any secret or disguised place adapted for the purpose of concealing any article; or

Alteration of vessel, aircraft or vehicle for the purpose of smuggling.

(iii) any hole, pipe or other device adapted for the purpose of smuggling,

the fittings, fabric or structure of the vessel, aircraft or vehicle shall be presumed until the contrary is proved to have been altered for the purpose of smuggling an article into or out of Hong Kong.

15. (1) The master or agent of a vessel, the commander of an aircraft and the person in charge of a vehicle shall, on entering or leaving Hong Kong—

Duty to provide particulars of all cargo.

- (a) furnish any member of the Preventive Service of or above the rank of Revenue Sub-Inspector full particulars of the cargo being imported or exported in or on the vessel, aircraft or vehicle if he is requested to do so by any such member of the Preventive Service; and
- (b) allow any member of the Preventive Service to board the vessel, aircraft or vehicle, inspect the cargo and search the vessel for contraband.

(2) Any person who contravenes paragraph (a) or (b) of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars and to imprisonment for one month.

16. (1) No person shall place any cargo in or on any vessel or aircraft without the consent of the owner of the vessel or aircraft.

Prohibition against unauthorized placing of cargo on vessels, etc.

(2) No person shall place any cargo in or on any vehicle which may leave Hong Kong without the consent of the owner of the vehicle.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

17. Any cargo which is imported or exported shall either—

All cargo to be recorded in manifests.

- (a) be recorded in a manifest, which shall contain such particulars of the consignment of the cargo as may be prescribed by the Director of Commerce and Industry for the purposes of this Ordinance by notice published in the *Gazette*; or
- (b) be recorded in a document which complies with such requirements in respect of the cargo as may be prescribed by the Director of Commerce and Industry for the purposes of this Ordinance by notice published in the *Gazette*.

Offence of importing or exporting unmanifested cargo.

- 18.** (1) Any person who—
- (a) imports any unmanifested cargo; or
 - (b) exports any unmanifested cargo,

shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) It shall be a defence to a charge under this section against the owner of a vessel, aircraft or vehicle, if the owner proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested.

Written list showing ports of call to be furnished to the Director.

19. (1) The owner of any vessel shall, if required to do so by the Director, an authorized officer or a member of the Preventive Service, furnish forthwith to the Director or to the authorized officer or member of the Preventive Service, a written list showing, so far as the owner is aware, every port or place at which the vessel has called during the period of three months immediately preceding the date of its arrival in Hong Kong.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of two hundred dollars.

PART V.

POWERS OF INVESTIGATION.

General powers of members of Preventive Service, etc.

20. (1) Without prejudice to the powers conferred by section 21, any member of the Preventive Service and any authorized officer may, for the purposes of this Ordinance—

- (a) enter at any reasonable time and search any premises (other than domestic premises) or place registered under this Ordinance and occupied by a person who has been registered under this Ordinance or a person who is the holder of a licence;
- (b) stop, board and search any vessel, aircraft or vehicle;
- (c) require any licence or any document—
 - (i) which relates to the origin or nature of any article; or
 - (ii) which he suspects to be relevant to an offence under this Ordinance, to be produced to him;

- (d) examine and take copies of any licence or any document referred to in paragraph (c);
- (c) take, without payment but subject to the issue of an official receipt for it, such sample of any article in respect of which any licence may be issued under this Ordinance as may be required by the Director for the purpose of examination and investigation;
- (f) examine any article if he considers it necessary to do so to ascertain whether or not the provisions of this Ordinance are being, or have been, complied with by any person in respect of that article; or
- (g) stop and search any person entering or leaving Hong Kong:

Provided that no person shall be searched except by a person of the same sex or be searched in a public place if he objects to being so searched.

(2) Any member of the Preventive Service and any authorized officer may require—

- (a) any person to whom a licence has been issued;
- (b) any person who has been registered under this Ordinance; and
- (c) any servant, employee or agent of any person referred to in paragraph (a) or (b),

to furnish such information or take such action as may be necessary to enable the member of the Preventive Service or the authorized officer to exercise the powers conferred on him under this Ordinance.

(3) When a sample of any article has been taken by a member of the Preventive Service or an authorized officer pursuant to paragraph (e) of subsection (1) the Director may, after examination and investigation of it, direct that the sample be returned to the owner thereof or disposed of in such manner as the Director thinks fit.

21. (1) Subject to section 22, any member of the Preventive Service and any authorized officer may, if he reasonably suspects that there is, in or on any premises or place, vessel, aircraft or vehicle, any article in respect of which an offence has been committed under this Ordinance or which is, or contains, evidence of the commission of such offence—

- (a) enter and search any such premises or place;
- (b) stop, board, remove, detain and search any vessel, aircraft or vehicle.

Special powers of members of the Preventive Service, etc.

(2) Any member of the Preventive Service and any authorized officer may seize—

(a) any article—

(i) in respect of which he reasonably suspects that an offence has been committed under this Ordinance; or

(ii) which he reasonably suspects to be, or to contain, evidence of the commission of such an offence; and

(b) any vessel which has a tonnage not exceeding two hundred and fifty gross tons and any vehicle, if he reasonably suspects such vessel or vehicle to have been used in connexion with the commission of an offence under this Ordinance.

(3) Subject to section 22, any member of the Preventive Service or any authorized officer may enter and search any premises or place connected with the manufacture, processing, production, storage, distribution or sale of any article in respect of which a licence has been issued under this Ordinance.

(4) The owner of any article, licence or other document seized by a member of the Preventive Service or an authorized officer under this section may, on application to the Director and subject to such conditions as the Director may impose, photograph or make any other form of copy of the seized article, licence or document.

Restrictions upon exercise of special powers of members of the Preventive Service, etc.

22. (1) No domestic premises shall be entered and searched by a member of the Preventive Service or an authorized officer unless—

(a) a magistrate has issued a warrant under subsection (2); or

(b) a member of the Preventive Service of or above the rank of Chief Revenue Inspector or an officer of the Commerce and Industry Department of or above the rank of Assistant Director of Commerce and Industry has given an authorization under subsection (3).

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any thing which may be seized under section 21, issue a warrant authorizing a member of the Preventive Service or an authorized officer to enter and search the premises.

(3) A member of the Preventive Service of or above the rank of Chief Revenue Inspector or an officer of the Commerce and

Industry Department of or above the rank of Assistant Director of Commerce and Industry may, if he reasonably suspects—

- (a) that there is in any domestic premises any thing which may be seized under section 21; and
- (b) that unless the premises are entered and searched immediately such thing is likely to be removed from the premises.

authorize in writing a member of the Preventive Service or an authorized officer to enter and search the premises.

(4) A member of the Preventive Service or an authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may call upon any member of the Preventive Service and any authorized officer to assist him in entering and searching the premises.

(5) No vessel which has a tonnage exceeding two hundred and fifty gross tons shall be detained under subsection (1) of section 21 for more than twelve hours without the consent of the Colonial Secretary, who may, by order in writing under his hand, detain such a vessel for further periods of not more than twelve hours each.

(6) No aircraft shall be detained under subsection (1) of section 21 for more than six hours without the consent of the Colonial Secretary, who may, by order in writing under his hand, detain an aircraft for further periods of not more than six hours each.

(7) Any order made by the Colonial Secretary under subsection (5) or (6) shall state the times from which and for which the order shall be effective.

23. (1) Any member of the Preventive Service and any authorized officer may, subject to subsection (2), arrest or detain for further inquiries without warrant any person whom he reasonably suspects of having committed any offence under this Ordinance.

(2) Any member of the Preventive Service and any authorized officer who arrests any person under subsection (1) shall take the person to a police station or, if further inquiries are necessary, first to the office of the Commissioner of the Preventive Service and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance:

Provided that in no case shall any person be detained for more than forty-eight hours without being charged and brought before a magistrate.

(3) If any person forcibly resists or attempts to evade arrest under this section, the member of the Preventive Service or the

Powers of arrest of authorized officers and members of the Preventive Service.

(Cap. 232.)

authorized officer may use such force as is reasonably necessary to effect the arrest.

(4) If any member of the Preventive Service or any authorized officer has reason to believe that a person whom he intends to arrest (hereinafter in this section referred to as the suspected offender) has entered into or is in any place or premises, any person residing in or in charge of such place or premises, any demand by the member or authorized officer, allow him free entry thereto and afford all reasonable facilities to search for the suspected offender therein.

(5) If entry to such premises or place cannot be obtained under subsection (4) a member of the Preventive Service or an authorized officer, in any case in which a warrant to enter and search such premises or place may issue but cannot be obtained without affording the suspected offender an opportunity to escape, may enter the premises or place and therein search for the suspected offender and for the purpose of entry or search may break open any outer or inner door or window of the premises or place.

24. Any member of the Preventive Service and any authorized officer may—

- (a) use such force as is reasonably necessary to enter any place or premises which he is empowered by this Ordinance to enter and search;
- (b) use such force as is reasonably necessary to stop, board, remove, detain and search any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board, remove, detain and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;
- (d) detain any person found in any premises or place which he is empowered by this Ordinance to search until such premises or place has been searched;
- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board and search until it has been searched;
- (f) search the person and property and effects of any person whom he reasonably suspects of being guilty of an offence under this Ordinance:

Provided that no person shall be searched except by a person of the same sex or be searched in a public place if he objects to being so searched.

Ancillary powers of investigation of suspected offence.

25. (1) Any member of the Preventive Service and any authorized officer may, for the purpose of exercising the powers conferred on him by this Ordinance, place a lock or seal on any premises or place, or on any vessel, aircraft, vehicle or article.

Locks and seals on premises, vessels, etc.

(2) If a member of the Preventive Service or an authorized officer has placed a lock or seal on any premises, or on any vessel, aircraft, vehicle or article, any person who breaks or interferes with such a lock or seal shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months:

Provided that if—

- (a) any person breaks or interferes with any such lock or seal in the *bona fide* belief that it is necessary immediately to break or interfere with the lock or seal in order to prevent—
 - (i) injury being suffered by any person; or
 - (ii) damage being incurred to any premises, article, vessel, aircraft or vehicle; or
- (b) any public officer breaks or interferes with any such lock or seal in the exercise of his lawful duties,

such person or public officer shall be deemed not to have contravened this subsection.

26. (1) Any person who—

- (a) obstructs a member of the Preventive Service or an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on members of the Preventive Service and authorized officers by this Ordinance; or
- (b) fails to comply with any requirement, direction or demand given or made by a member of the Preventive Service or an authorized officer in the exercise or performance of any such power or duty,

Obstruction of members of the Preventive Service, etc.

shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

(2) Any person who knowingly makes a false report, or furnishes any false or misleading information, to any member of the Preventive Service or any authorized officer in performing his duties under this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of ten thousand dollars and to imprisonment for six months.

PART VI.

FORFEITURE.

Seized articles,
etc. liable to
forfeiture.

27. (1) There shall be liable to forfeiture—

- (a) any article which has been seized by a member of the Preventive Service or an authorized officer in connexion with the contravention of any provision of this Ordinance;
- (b) any vessel not exceeding two hundred and fifty gross tons and any vehicle so seized and used in connexion with the contravention of any provision of this Ordinance,

whether or not any person has been convicted of an offence in respect of such contravention.

(2) The Director may, at any time before serving notice under subsection (3), restore any article (other than an article referred to in the Schedule) or any vessel or vehicle which is liable to forfeiture to the person who appears to him to be the owner thereof or the authorized agent of the owner; and upon such restoration the provisions of this section and sections 28, 29 and 30 shall cease to apply to the article, vessel or vehicle.

Schedule.

(3) Within twenty-one days after the seizure of any article, vessel or vehicle which appears to him to be liable to forfeiture under subsection (1), the Director shall serve notice of such seizure upon the owner of the article, vessel or vehicle:

Provided that if there is more than one owner of any such article, vessel or vehicle, it shall be sufficient for the purposes of this subsection to give notice to one such owner.

(4) A notice given under subsection (3) shall be deemed to have been duly served if—

- (a) it is delivered to the person on whom it is to be served;
- (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Director; or
- (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Commerce and Industry Department, in a place to which the public have access, for a period of not less than seven days commencing within twenty-one days from the date of the seizure of the article, vessel or vehicle.

(5) Where a notice has been served under subsection (3) in respect of any article, vessel or vehicle seized under this Ordinance any person—

- (a) who is the owner thereof or the authorized agent of the owner; or

(b) who was in possession of the article, vessel or vehicle when it was seized,

(hereinafter referred to as the claimant) may, within thirty days after—

(i) the date of the notice, if it was served under paragraph (a) or (b) of subsection (4); or

(ii) the first day on which it was exhibited, if it was served under paragraph (c) of subsection (4),

give notice in writing to the Director that he claims that the article, vessel or vehicle is not liable to forfeiture.

(6) If, on the date of expiration of the appropriate period of time specified in subsection (5) for the giving of a notice of claim, under that subsection, no such notice has been given in writing to the Director the article, vessel or vehicle in respect of which notice was given under subsection (3) shall be forfeited forthwith to the Crown.

28. (1) When a notice of claim is given under subsection (5) of section 27, the Director or an authorized officer shall apply to a magistrate for the forfeiture of the article, vessel or vehicle and shall state in the application the name and address of the claimant as specified in the notice of the claim.

Determination by magistrate of applications for forfeiture.

(2) When any such application is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Director.

(3) If, at the time and place appointed in a summons issued under subsection (2), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under subsection (5) of section 27, appears before a magistrate, the magistrate shall hear the application.

(4) If, at such time and place, neither the claimant nor any other person who, though not the claimant, was, or would have been, entitled to make a claim under subsection (5) of section 27, appears before a magistrate and the magistrate is satisfied that the summons was duly served, the magistrate shall hear the application.

(5) Subject to the provisions of this Ordinance, an application under this section shall be deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance.

(6) Upon the hearing of an application under this section a magistrate shall order that the article, vessel or vehicle, as the case may be, be forfeited to the Crown—

(a) in the case where—

(i) the person who appears in answer to the summons fails to satisfy the magistrate that he was, or would have been, entitled to make a claim under subsection (5) of section 27 in respect of the seized article, vessel or vehicle; and

(ii) no other person appears before the magistrate and satisfies him that he was, or would have been entitled to make such claim; and

(iii) the magistrate is satisfied that the article, vessel or vehicle is liable to forfeiture; or

(b) in the case where the magistrate is satisfied that the article—

(i) is liable to forfeiture; and

(ii) is such an article as is referred to in the Schedule.

Schedule.

(7) Upon the hearing of the application under this section, in any case other than a case referred to in paragraph (a) or (b) of subsection (6) a magistrate may, if he is satisfied—

(a) that a person is, or would have been, entitled to make a claim under subsection (5) of section 27 in respect of the seized article, vessel or vehicle; and

(b) that the article (not being such an article as is referred to in the Schedule), vessel or vehicle is liable to forfeiture,

order that the article, vessel or vehicle—

(i) be forfeited to the Crown;

(ii) be delivered to the owner thereof or the authorized agent of the owner subject to any condition which he may specify in the order; or

(iii) be disposed of in such manner and subject to any such condition as he may specify in the order.

(8) Upon the hearing of the application—

(a) a certified true copy of the record of the proceedings, including the decision of the court, in any proceedings in respect of the contravention of any provision of this Ordinance shall be admissible in evidence; and

(b) a certificate, purporting to be issued under the hand of the Director of Marine, certifying the gross tonnage of any vessel shall, upon production of the certificate and without proof of the signature thereon, be admissible as *prima facie* evidence of the facts stated therein.

29. (1) Where an application has been made under section 28 in respect of a vessel or vehicle which is liable to forfeiture, a magistrate may, upon payment into court by way of security of a sum of money not less in amount than the value of the seized vessel or vehicle, as assessed by the Director or an authorized officer, order that the vessel or vehicle be delivered to the claimant thereof upon the condition that the vessel or vehicle be re-delivered into the custody of the Director before the date of hearing of the application.

Power to release seized vessels and vehicles prior to the hearing.

(2) If—

- (a) a magistrate has ordered under subsection (1) that a seized vessel or vehicle be delivered to the claimant thereof; and
- (b) the vessel or vehicle is not delivered into the custody of the Director before the date of the hearing under section 28,

the magistrate hearing the application may, in lieu of ordering under subsection (6) or (7) of section 28 that the vessel or vehicle be forfeited to the Crown, order that the money paid into court under subsection (1) of this section be forfeited to the Crown or returned to the person who paid it into court.

30. (1) The owner of any article, vessel or vehicle forfeited to the Crown under this Ordinance, or the authorized agent of the owner, may, within six weeks after—

Claims for the return of forfeited articles, etc.

- (a) the article, vessel or vehicle has been forfeited to the Crown under subsection (6) of section 27 or has been forfeited to the Crown by order of a magistrate under subsection (6) or (7) of section 28; or
- (b) the determination of any appeal against an order for forfeiture of the article, vessel or vehicle made by a magistrate under subsection (6) or (7) of section 28,

give notice in writing to the Director of his intention to submit to the Governor a moral claim in respect of the forfeited article, vessel or vehicle.

(2) Where the owner of any forfeited article, vessel or vehicle or his authorized agent has given notice in writing to the Director under subsection (1) and has submitted a moral claim to the Governor by lodging it in triplicate with the Colonial Secretary within one month from the date of such notice, the Governor after considering the claim may—

- (a) order the return of the forfeited article, vessel or vehicle to the claimant; or
- (b) direct that the claim be referred to the Governor in Council.

- (3) The Governor in Council after considering the claim referred to him under subsection (2) may—
- (a) order the return of the forfeited article, vessel or vehicle to the claimant; or
 - (b) reject the claim.

PART VII.

REGULATIONS.

Power to make regulations.

31. (1) The Governor in Council may make regulations for all or any of the following purposes—

- (a) prohibiting the import and export of any article;
- (b) prohibiting the import and export of any article except under and in accordance with the terms and conditions of a licence;
- (c) providing for the issue of licences to import or export any article;
- (d) prescribing conditions to be observed by any person before or after the issue of an import licence or an export licence;
- (e) imposing upon owners of ships, aircraft and vehicles, masters of ships, commanders of aircraft and persons in charge of vehicles such obligations in respect of manifests, bills of lading, air waybills, air consignment notes and such other similar matters as may be necessary for carrying into effect the provisions of this Ordinance;
- (f) imposing other conditions or restrictions on the import or export of any article;
- (g) imposing conditions or restrictions on any cargo placed in or on any vessel, aircraft or vehicle for the purpose of import or export;
- (h) controlling the examination and storage of articles imported or exported or about to be imported or exported;
- (i) requiring any person importing or exporting any article to give any specified information in respect of the article before or after it has been imported or exported;
- (j) regulating the movement within Hong Kong of any article which has been or is intended to be imported or exported or otherwise dealt with under the provisions of this Ordinance;

- (k) providing for the issue of certificates in respect of the importing, exporting, producing, processing, manufacturing and composition of any article and for conditions which may be attached to such certificate;
- (l) providing for the issue of certificates in respect of preferential customs tariffs and for conditions which may be attached to such certificate;
- (m) providing for the registration of any person applying for the issue of any licence and for conditions which may be attached to such registration;
- (n) providing for the registration of any person importing, exporting, manufacturing, processing, storing, distributing, selling or dealing with any article in respect of which any licence may be issued and for the condition which may be attached to the registration of any such person;
- (o) providing for the registration of any premises—
 - (i) in respect of which any licence may be issued; or
 - (ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence may be issued,and prescribing any condition upon the registration of such premises;
- (p) providing for the cancellation, revocation or suspension for any period of the registration of any person where the Director is satisfied that the person so registered has contravened any condition of any licence;
- (q) providing for the imposition and administration of quota controls in respect of the import or export of any article;
- (r) providing for the sale or transfer of any quota and for the conditions under which any quota may be sold or transferred;
- (s) providing for the registration of any person involved in any dealing with an article on which any quota control is imposed and the transfer of any such registration from one person to another;
- (t) requiring importers, exporters, carriers, owners and manufacturers to furnish to the Director or any other specified public officer information for the purpose of compiling statistics of overseas trade;

- (u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Director, an authorized officer or a member of the Preventive Service under this Ordinance;
- (v) providing for the verification of any particulars or information required to be furnished by any person under this Ordinance;
- (w) providing that any person who fails to submit any document or furnish any information to the Director or other specified public officer within a prescribed period of time shall be liable to pay a prescribed sum of money, which sum shall be a civil debt due to and recoverable by the Crown;
- (x) prescribing fees to be collected by the Director in respect of any matter arising under this Ordinance and generally to prescribe the mode and time of payment of such fees;
- (y) empowering the Director to determine the form of any licence and any undertaking required under this Ordinance;
- (z) providing that the Director of Commerce and Industry may, by notice published in the *Gazette*, amend the Schedule to any regulation made under this Ordinance;
- (aa) levying, with or without exception or exemption, a charge on persons or any category of persons who furnish particulars pursuant to any regulation made under this section, and prescribing the amount or method of ascertaining the amount of such charge and the mode and time of payment thereof;
- (ab) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any person who, being required under any regulation made under this Ordinance to lodge a declaration with the Director in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;
- (ac) empowering the Director to waive the payment of any pecuniary penalty imposed under regulations made under paragraph (ab) and to refund any such pecuniary penalty which has been paid;
- (ad) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;

- (ae) providing for the forfeiture to the Crown by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad);
- (af) prescribing any thing which is to be or may be prescribed under this Ordinance; and
- (ag) generally for the better carrying out of the provisions and purposes of this Ordinance.

(2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor.

(3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding one hundred thousand dollars and imprisonment for a term not exceeding two years.

(4) No regulation made under paragraph (aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council.

32. The Legislative Council may by resolution provide for the imposition of a levy upon any person required under this Ordinance to furnish information for the purpose of compiling statistics of overseas trade and to provide for the method of determination of the levy and the mode and time of payment thereof.

Power to levy by resolution of Legislative Council.

PART VIII.

MISCELLANEOUS.

33. (1) In any proceedings under this Ordinance it shall, unless the contrary is proved, be presumed that any cargo recorded in an import manifest furnished by—

- (a) the master of a vessel;
- (b) the commander of an aircraft;
- (c) the person in charge of a vehicle; or
- (d) the owner of such vessel, aircraft or vehicle,

Evidentiary provisions.

has been imported in or on such vessel, aircraft or vehicle.

(2) In any proceedings under this Ordinance it shall, unless the contrary is proved, be presumed that any cargo recorded in an export manifest furnished by—

- (a) the master of a vessel;
- (b) the commander of an aircraft;

- (c) the person in charge of a vehicle; or
- (d) the owner of such vessel, aircraft or vehicle,

at any time before or after the departure from Hong Kong of the vessel, aircraft or vehicle, has been exported, or is intended to be exported, in or on such vessel, aircraft or vehicle.

(3) Any copy of an import manifest or an export manifest produced to the Director, an authorized officer or a member of the Preventive Service under any provision of this Ordinance shall be admissible as evidence of the contents of the import manifest or export manifest of which it is a copy in any proceedings under this Ordinance; and the cargo referred to in the copy of such manifest shall be presumed until the contrary is proved, to have been imported or exported as the case may be in or on the vessel, aircraft or vehicle to which the copy of the manifest relates.

(4) Any copy of a licence or other document produced to the Director, an authorized officer or a member of the Preventive Service under any provision of this Ordinance shall be admissible as evidence of the contents of the licence or other document of which it is a copy in any proceedings under this Ordinance before a court or magistrate.

Onus of proof
in court
proceedings.

34. (1) In any proceedings under this Ordinance the onus of proving—

- (a) the place—
 - (i) from which an article has been imported; or
 - (ii) to which an article is intended to be exported; or
- (b) that an article—
 - (i) has been imported in accordance with the terms of a licence;
 - (ii) is intended to be exported in accordance with the terms of a licence;
 - (iii) has been imported for the sole purpose of exporting the article;
 - (iv) has been lawfully placed in or on any vessel, aircraft or vehicle for the purpose of exporting the article;
 - (v) has been lawfully removed from any vessel, aircraft or vehicle in or on which it was imported;
 - (vi) has been lawfully delivered to or placed in any premises or place after it has been imported; or

(vii) has been recorded in the manifest of the vessel, aircraft or vehicle in or on which it has been imported or is intended to be exported,

shall lie upon the defendant in any such criminal proceedings and the claimant in any forfeiture proceedings.

(2) For the purposes of this section, the provisions of Part IIA of the Evidence Ordinance (which relates to the admissibility of hearsay evidence in civil proceedings) shall apply as if proceedings under this Ordinance were civil proceedings.

(Cap. 8.)

35. (1) The provisions of this Ordinance shall apply to any article contained in a postal packet.

Application of Ordinance to postal packets.

(2) Notwithstanding the provisions of subsection (1), a postal packet contained in a sealed mail bag shall, if the mail bag is listed in the manifest of the vessel, aircraft or vehicle in or on which it is imported or exported, not be construed as cargo for the purposes of this Ordinance.

(3) Any authorized officer or any member of the Preventive Service may, in the presence of and under the directions of an officer of the Post Office, open and examine any postal packet held in the custody of the Post Office.

(4) For the purposes of this section, the terms "mail bag", "Post Office", "officer of the Post Office" and "postal packet" shall have the meanings assigned to such terms, respectively, under section 2 of the Post Office Ordinance.

(Cap. 98.)

36. (1) Any person who, in respect of—

- (a) an application for the issue of a licence;
- (b) an application for registration under this Ordinance; or
- (c) any declaration, document or article required to be lodged with the Director, an authorized officer or member of the Preventive Service pursuant to the provisions of this Ordinance,

Offences in respect of licences.

makes any statement or furnishes any information orally or in writing which is false or misleading in a material particular or omits any material particular shall be guilty of an offence and shall be liable on conviction to a fine of fifty thousand dollars and to imprisonment for one year, unless he satisfies the court or magistrate that he did not know and had no reason to believe the statement or information to be false or misleading or the omission to be material.

(2) Any person who, without the authority of the Director, alters a licence shall be guilty of an offence and shall be liable

on conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

Time limitation
for criminal
proceedings.

37. A complaint may be made or an information laid in respect of an offence under this Ordinance within two years from the time when the matter of such complaint or information respectively arose.

Informers.

38. Save where, in the opinion of the court, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any civil or criminal proceedings and the court may make any order and adopt any procedure necessary to prevent any such disclosure.

Amendment of
Schedule.

39. The Governor may amend the Schedule by notice published in the *Gazette*.

Repeals.

40. (1) The Importation and Exportation Ordinance is repealed.

(Cap. 228.)

(2) Section 11 of the Summary Offences Ordinance is repealed.

SCHEDULE.

[ss. 27, 28 & 39.]

ARTICLES IN RESPECT OF WHICH, IF THEY ARE LIABLE TO FORFEITURE,
AN ORDER FOR THEIR FORFEITURE IS MANDATORY.

1. Gold.
2. Acetic anhydride.
3. Any article prescribed in the Schedule to the Importation and Exportation (Strategic Commodities) Regulations.
4. Any article—
 - (a) which has been imported directly or indirectly from Southern Rhodesia or from any other country if the article has been produced, manufactured or processed or has in any other way originated in Southern Rhodesia; or
 - (b) which is intended to be exported directly or indirectly to Southern Rhodesia.

Passed by the Hong Kong Legislative Council this 17th day of June, 1970.

R. J. FRAMPTON,
Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

R. J. FRAMPTON,
Deputy Clerk of Councils.