

M O N T S E R R A T

NO. 20 OF 2010

**CUSTOMS (CONTROL AND MANAGEMENT)
(AMENDMENT) (NO.2) ACT**

ARRANGEMENT OF SECTIONS

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I ASSENT

**Peter Waterworth
GOVERNOR**

DATE: 25.10.10

M O N T S E R R A T

N O . 2 0 O F 2 0 1 0

AN ACT TO AMEND THE CUSTOMS (CONTROL AND MANAGEMENT) ACT (CAP. 17.04)
TO REFORM AND MODERNIZE THE CUSTOMS PROCESS TO ACCOMMODATE THE
AUTOMATED SYSTEM FOR CUSTOMS DATA (ASYCUDA) AND RELATED MATTERS

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the
advice and consent of the Legislative Council of Montserrat and by the Authority
of the same as follows—

Short title

1. This Act may be cited as the Customs (Control and Management) (Amendment) (No. 2) Act, 2010.

Interpretation

2. In this Act “**principal Act**” means the Customs (Control and Management) Act (Cap. 17.04).

Replacement of ‘proper officer’

3. The principal Act is amended by deleting “the proper officer” wherever it occurs and substituting “Customs”.

Section 2 amended

4. Section 2 of the principal Act is amended by—

(a) deleting the definition “**entry**” and substituting the following:

““**entry**”, in relation to the importation or exportation of goods, means any document delivered to Customs in accordance with section 26(1) or section 34(1) respectively, and in relation to vessels or aircraft, means any document delivered to Customs in accordance with section 35(2);”;

(b) deleting, in the definition “**entered**”, paragraph (a) and substituting the following:

“(a) in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported means the registration with Customs of an entry, specification or shipping bill and declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to Customs by the importer or exporter of all rents and charges due to the Government in respect of the goods; and”;

(c) inserting in alphabetical order the following definitions:

““**Customs**” means the department of Government headed by the Comptroller, and includes a reference to the Comptroller or any officer authorised under section 5;

“**declaration**” means the provision of any information to customs whether verbally, in a document or in electronic form by a person or their agent relating to particular items which are imported or exported or in transit;

“**document**” includes—

(a) a map, plan, drawing or photograph;

(b) any information in writing relating directly or indirectly to goods which are imported, exported or in transit;

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- (c) any writing required by the Comptroller;
 - (d) any information recorded or stored by means of any tape recorder, computer hardware or software and any material subsequently derived from the information recorded or stored;
 - (e) anything from which sounds or visual images are capable, with or without the aid of a device, of being reproduced;
 - (f) a copy, reproduction or duplicate of a document or part of such copy, reproduction or duplicate; or
 - (g) anything on which there is writing;

“signature” includes—

- (a) an electronic signature which is—
 - (i) incorporated into, or otherwise logically associated with, any electronic communication or other electronic data,
 - (ii) generated by the signatory or other source of the communication or data, or
 - (iii) used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, the establishment of its integrity or both;
- (b) a key, in relation to any electronic data, used by means of a code, password, algorithm or other data the use of which, with or without keys—
 - (i) allow access to the data, or
 - (ii) facilitates the putting of the data into an intelligible form;

“writing” includes electronically generated information which is accessible and capable of retention for subsequent reference;”.

Section 25 amended

5. Section 25 of the principal Act is amended by deleting subsection (1) and substituting the following:

- “(1) The master of every vessel arriving at a customs port—
- (a) from any place outside Montserrat; or
 - (b) carrying goods brought in that vessel from a place outside Montserrat and not yet cleared on importation,

shall deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct—

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- (i) in the case of a vessel that is 100 metric tonnes or less, upon arrival; and
 - (ii) in the case of a vessel that is more than 100 metric tonnes, at least 24 hours before arrival.”.

Section 26 amended

6. Section 26 of the principal Act is amended by deleting subsection (1) and substituting the following:

“(1) The importer of any goods, other than goods which are exempt from the requirements of this section, imported by air or sea, shall before entering those goods register an entry of those goods, in such form and manner and containing such particulars as the Comptroller may direct.”.

Section 29 amended

7. Section 29 of the principal Act is amended by inserting the following after subsection (2):

“(2A) A person who—

- (a) claims a letter or postal package arriving in Montserrat; or
- (b) posts a letter or postal package in Montserrat for transmission abroad;

which contains currency, cheques or monetary instruments, or any combination, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, shall make a declaration as directed by the Comptroller.

(2B) A person who fails to make the declaration commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or 3 times the value of the currency, cheques or monetary instruments not declared, whichever is the greater or to imprisonment for one year or to both.”.

Section 46 amended

8. Section 46 of the principal Act is amended by deleting subsection (2) and substituting the following:

“(2) If the vessel or aircraft does not receive clearance within one hour after the account was produced, and no officer is stationed at the port or airport where the vessel or aircraft is located, the vessel or aircraft may depart from that place and, upon departure, shall proceed directly to an approved wharf or customs airport and the account produced there.”.

Section 61 amended

9. Section 61 of the principal Act is amended in subsection (2) by deleting the words “removal of” and substituting the words “registration of customs entry to remove”.

Section 65 amended**10.** Section 65 of the principal Act is amended—

(a) in subsection (2)—

- (i) in the chapeau, by inserting the words “on the date of initial registration of declaration” between the words “force” and “with”;
- (ii) in paragraph (a) by deleting the words “at the time of the delivery of the entry” where it appears in that paragraph and substituting the words “on the date of initial registration of the declaration”; and
- (iii) in paragraph (c) by deleting the words “at the time of delivery” where it appears in that paragraph and substituting the words “on the date of initial registration of the declaration”;

(b) in subsection (3)—

- (i) by deleting the words “in respect of those goods is delivered to the proper officer” and substituting the words “in respect of those good is registered with Customs”;
- (ii) by deleting the word “delivery” and substituting the word “registration”.

Section 102 amended**11.** Section 102 of the principal Act is amended—

(a) by deleting subsection (1) and substituting the following:

“(1) A officer may, at any time within 5 years of the importation, exportation or carriage coastwise of any goods, require any importer, exporter or other person concerned in that importation, exportation or carriage coastwise or in the carriage, unloading, landing or loading of such goods—

- (a) to furnish to Customs in the form and manner that Customs require, information relating to the goods;
- (b) to give access to any computer for the purposes of verification and audit; and
- (c) to produce and permit Customs to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or documents relating to the goods.

(b) by deleting subsection (3) and substituting the following:

“(3) A person shall not—

- (a) tamper with any information, computer, document or evidence required under subsection (1) or (2) prior to its production, access or inspection; or
- (b) fail to comply, without reasonable cause, with a requirement imposed on him under subsection (1) or (2);

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for one year or to both.”

Section 117A inserted

12. The principal Act is amended by inserting the following section immediately after section 117—

“Computer fraud and related offences

117A. (1) A person shall not knowingly or with intent to defraud the Government—

- (a) access a computer without authorization;
- (b) without authorization access any computer of Customs that is exclusively for the use of Customs, or in the case of a computer not exclusively for such use is used by or for Customs;
- (c) access a computer without authorization and by means of such conduct—
 - (i) obtains any document, information or confidential instruction;
 - (ii) alters any document, information or confidential instruction;
 - (iii) introduces any information on the computer which is for the sole purpose of creating a computer virus or otherwise corrupts the computer;
- (d) use authorised access to—
 - (i) obtain or alter information on the computer that the person is not entitled to obtain or alter; or
 - (ii) introduce any information on the computer for the sole purpose of creating a computer virus or otherwise corrupt the computer.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both.

(3) For the purposes of this section “**computer**” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.”

Section 140A inserted

13. The principal Act is amended by inserting the following section immediately after section 140—

“Record retention

140A. (1) Importers and exporters shall keep any invoice, bill of lading, electronic or mechanical record or other book or document relating to importation, exportation or carriage coastwise of goods for a period of 5 years from the date of importation, exportation or carriage coastwise of those goods.

(2) Any person who, without reasonable cause, fails to comply with a requirement imposed on him under subsection (1) is guilty of an offence and is liable to a fine not exceeding \$10,000.”

T. Bodkin
SPEAKER

Passed by the Legislative Council this 7th day of October, 2010.

Judith Jeffers
CLERK OF COUNCIL