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## CHAPTER 340

### THE PREVENTION OF SMUGGLING ACT

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## PREVENTION OF SMUGGLING

(4th March, 1895.)

4/1895.  
21/1950.  
18/1989.  
S.I. 39/1989.

1. This Act may be cited as the Prevention of Smuggling Act. **Short title.**
2. In this Act— **Interpretation.**
- "Comptroller of Customs" includes any revenue officer;
- "manifest" includes inward and outward report of cargo, whether the report be put in by the master or by the agent of the vessel;
- "master" includes every person having or taking command or charge of a vessel;
- "revenue laws" means this Act or any Act or enactment, past or future, in force for the protection of the revenue;
- "spirits" means and includes rum, gin, whisky, brandy, wines, liqueurs, bay rum, perfumed and medicated spirits and malt liquors;
- "tobacco" means and includes leaf tobacco, manufactured tobacco, cigars, cigarettes and snuff;
- "vessel" includes ship, boat, canoe, and every description of floating craft, however propelled, and whether decked or undecked, used in navigation.
3. (1) If any vessel, being within the territorial sea shall not bring to, upon signal made by any of Her Majesty's vessels or by any vessel in the service of Antigua and Barbuda, such signal to be made by day by hoisting the blue ensign and by night by discharging a gun or other firearm, the master of such vessel so not bringing to shall on summary conviction be liable to a fine of one thousand dollars. **Vessel not bringing to, when called on.**

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(2) If any vessel shall not bring to on signal so made and shall be chased by any of Her Majesty's vessels or by any vessel in the service of Antigua and Barbuda, it shall be lawful for the captain or other the person having charge of such vessel of Her Majesty or in the service of Antigua and Barbuda, either within or without the territorial sea, first causing two guns or other firearms to be fired as a signal, to fire at or into the vessel being chased, if the latter vessel shall be within the territorial sea; and such captain or other person having charge as aforesaid and any other person acting in his aid or by his direction, on proving that the requirements of this subsection were complied with, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing.

Destroying cargo,  
when chased.

4. If any vessel shall not bring to on signal so made, and chase shall be given, and any person on board such vessel, while within the territorial sea, and during such chase, or before or after such vessel shall bring to, shall throw overboard any part of her lading, or stave or destroy any part thereof, such vessel shall thereupon be forfeited, and every person who was employed in working such vessel during the chase shall be liable, on summary conviction, to a fine not exceeding three thousand dollars and, in default of payment, to be imprisoned with hard labour for any term not exceeding six months.

Boarding and  
searching vessel.

5. Any vessel found within the territorial sea may be boarded and searched by the Comptroller of Customs or any person acting under his orders or by any officer or other person employed for the protection of the revenue or by any police officer, and if, upon examination, she shall be found to have any spirits or tobacco on board, the captain may be directed, unless the vessel shall be bound for any port in Antigua and Barbuda, forthwith to depart beyond the limit of the territorial sea, and if, not being bound for any port in Antigua and Barbuda, she shall not so depart, or if, whether so bound or not, she shall afterwards be found within the said limit short of any such spirits or tobacco or in ballast, and the master shall be unable to give a satisfactory account of the cargo that was first found on board of her, then such vessel shall be forfeited, and the master shall, on summary conviction, be liable to a fine not exceeding five thousand

dollars and, in default of payment, to be imprisoned with hard labour for any term not exceeding six months:

Provided that, where it can be proved that the owner himself is not implicated in an offence against this section, so much of this section as relates to forfeiture shall be deemed not to apply.

**6.** (1) The master of any vessel arriving within the territorial sea shall, when called upon so to do by any person having power to board and search such vessel, produce to such person a clearance, of all cargo on board of such vessel, and if such master shall refuse or neglect so to do, or should such cargo not agree with the clearance produced, then, unless the discrepancy, if any, shall be satisfactorily explained, such master shall be liable, on summary conviction, to pay a fine not exceeding three thousand dollars and, in default of payment, to be imprisoned with or without hard labour, for any term not exceeding three months.

**Liability of  
vessels arriving  
to produce  
clearances.**

(2) The clearance shall be from the proper Custom authorities at the port from which the vessel last sailed:

Provided that this subsection shall not apply to registered steamships.

**7.** (1) Whenever any vessel boarded by any officer having authority to board and search the same shall be bound or reported to such boarding officer to be bound for any port of Antigua and Barbuda, such boarding officer may appoint any person under his command to go in such vessel to the port for which she shall be bound, and to remain on board until the necessary entries shall have been made at the Customs of such port and, should the cargo not be landed at such port, then to remain in such vessel until she shall finally leave the coasts of Antigua and Barbuda.

**Placing officers  
on board vessels  
bound for ports  
in Antigua and  
Barbuda.**

(2) While any person is so placed on board any vessel, it shall be the duty of the master of such vessel to supply him with proper and sufficient food, water and accommodation, for which he shall be entitled to claim remuneration at the rate of forty-eight cents a day; and any master failing herein shall be liable to a penalty not exceeding two hundred and fifty dollars recoverable summarily before a Magistrate.

Smuggling spirits  
and tobacco.

**8.** Every person concerned in smuggling any spirits or tobacco, or in landing or attempting to land any spirits or tobacco without having first obtained the proper permit of the Comptroller of Customs, and every person receiving or harbouring such goods, knowing the same to have been smuggled or landed as aforesaid, shall be liable on summary conviction, to be imprisoned, with or without hard labour, for any term not exceeding six months.

Accessories before  
the fact in  
general to  
smuggling.

**9.** Every person who, being in Antigua and Barbuda shall induce or attempt to induce, or shall direct or solicit, any other person, whether within or without Antigua and Barbuda, to smuggle or bring into or land in Antigua and Barbuda any goods without paying the import duty or any other duty or duties which may be payable by law in respect thereof, shall, on summary conviction, be liable to be imprisoned, with or without hard labour, for any term not exceeding three months.

Signalling in aid  
of smugglers.

**10.** (1) Every person who, after sunset and before sunrise, shall make or aid or assist in making any signal in or on board of or from any vessel or on or from any part of Antigua and Barbuda for the purpose of giving notice to any person on board any smuggling vessel, whether any person so on board be or be not within distance to notice such signal, shall be guilty of a misdemeanour, and may be arrested without warrant, and, on conviction, shall be liable to be imprisoned, with or without hard labour, for any term not exceeding twelve months.

(2) In any proceedings against any person under this section it shall not be necessary to prove that any person was actually on board any vessel, or that any vessel was actually off the shores of Antigua and Barbuda.

(3) The Comptroller of Customs or any member of the Police Force may at any time prevent any signal being made for the purpose of giving notice to any person on board a smuggling vessel and may go upon any lands for that purpose without being liable to any indictment, penalty, action or proceeding therefor.

**11.** If any person, armed with a gun, pistol, sword, pike, or staff or by throwing or using stones or any other instrument, or in any violent manner, rescues or attempts to rescue any offender arrested or any vessel, goods or chattels seized under the revenue laws or prevents or attempts to prevent any such arrest or seizure or assaults, beats or wounds any revenue officer or member of the Police Force or other person acting in his aid or assistance or any person acting in the exercise of any of the powers given by the revenue laws or any person who has given or is about to give information or has discovered or given evidence or is about to give evidence in respect of any breach of the revenue laws, or forcibly opposes the execution of any of the powers given by the revenue laws, or, being armed or by such means or with such violence as aforesaid or in a violent manner, offers or threatens so to do, then every person so offending and his aiders and abettors shall be guilty of felony and shall be liable, on conviction, to be imprisoned with hard labour for any term not exceeding five years.

**Violent rescues from, assaults upon and resistance to revenue officers and others.**

**12.** (1) No spirits or tobacco shall be brought into the territorial sea or imported into or exported from Antigua and Barbuda in any vessel of less than thirty tons burthen:

**Prohibition of carriage of spirits or tobacco in vessels under 30 tons.**

Provided always that whenever it shall be made to appear to the Comptroller of Customs that any person desiring to import into or export from any part of Antigua and Barbuda any spirits or tobacco is unable to procure a vessel of thirty or more tons burthen wherein to import or export the same it shall be lawful for the Comptroller of Customs by writing under his hand to grant permission in the form set forth in Schedule B for a vessel of less than thirty tons burthen to be used for such purpose aforesaid and for such period and subject to such conditions as he may see fit, and he may refuse to issue such permission without reason assigned, and may recall, cancel or vary any such permission already issued.

**Schedule B.**

(2) Any vessel arriving at any port or place in the island of Antigua from the island of Barbuda or at any place in the island of Barbuda from the island of Antigua, shall be deemed and dealt with in such like manner as if such vessel had arrived from any port outside the limits of Antigua and Barbuda for the purpose of this section only.

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(3) Any person offending against the provisions of this section shall be liable on summary conviction to a penalty not exceeding twenty-five thousand dollars, and all spirits or tobacco brought into the territorial sea, imported or exported contrary to the provisions contained therein shall be forfeited.

Forfeiture of vessels under 30 tons having spirits or tobacco on board.

**13.** Any vessel of less than thirty tons burthen, save and except as hereinbefore provided, having on board any spirits or tobacco and arriving at or anchoring or lying to or being within the territorial sea or departing therefrom shall together with the cargo on board thereof, and the furniture, tackle, apparel and boats belonging thereto, be forfeited:

Provided that the provisions of this section shall not apply where the master of the vessel satisfies the Comptroller of Customs that the vessel has arrived, anchored, lain to, or was a<sup>9</sup> aforesaid through stress of weather or other good and sufficient cause.

Bonds on exportation of spirits and tobacco.

**14.** Every person shipping or exporting spirits or tobacco from Antigua and Barbuda shall, before clearance is granted to the vessel on which the same are or is shipped, enter into a bond in treble the amount of the import duty which would be payable on such spirits or tobacco, if the same were imported into Antigua and Barbuda for home consumption, and, in the discretion of the Comptroller of Customs, with or without sureties to be approved by the Comptroller of Customs, which bond shall be in the form set forth in the Schedule A, with such modifications, if any, as the Comptroller of Customs shall allow, and the sum or sums recoverable under such bond, if the same becomes forfeit by failure to perform the condition therein contained, shall be recoverable in the manner prescribed by the Magistrate's Code of Procedure Act, for the enforcing payment of sums due under forfeited recognizances conditioned for the doing of some matter or thing to be done before a Magistrate:

Schedule A.

Cap. 255.

Provided that no fee, stamp duty or other duty shall be chargeable or payable in respect of any such bond; and provided that the provisions of this section shall not apply to spirits as to which the Comptroller of Customs is satisfied that the same are being shipped to the United Kingdom or any part of the continent of North America.

**15.** Any vessel forfeited by virtue of any of the revenue laws may be seized as forfeited by any officer or person having authority to board vessels, and any other property forfeited by virtue of any of the revenue laws may be seized as forfeited by the Comptroller of Customs or any person acting for him or under his authority or by any police officer, and any such vessel or other property shall be disposed of in such manner as the Minister may direct, or otherwise may be sold by the Comptroller of Customs at auction to the highest bidder, and the proceeds of the sale of the same shall be applied in the manner hereinafter provided with reference to fines, forfeitures and penalties.

Seizure and sale  
of forfeitures.

Amended  
2/1950.

**16.** Proceedings may be taken against any person under this Act at any time within two years next after the time when such person offended against or failed to comply with the provisions of this Act.

Limitation of  
prosecutions.

**17.** On the commission of any offence against the revenue laws which is punishable on summary conviction, any one of the offending parties who first discovers and informs against the other or others of such offending parties, before any information has been lodged against such informing party for such offence, shall, upon conviction of the person or persons against whom such information shall have been given, be discharged and acquitted from all penalties to which at the time of such information given such informing party might have been liable for or by reason of such offence.

Indemnity to  
Informing  
accomplices.

**18.** (1) The following documents shall be admitted before all courts as *prima facie* evidence of the matters therein contained—

Evidence.

(a) An original certificate, clearance, or manifest or any certified copy thereof or other document or writing purporting to bear the signature of the Comptroller of Customs or any revenue officer and relating to any matter to which the revenue laws apply; and

(b) An original certificate, clearance or manifest or any certified copy thereof or other document or writing issued by and purporting to bear the signature of any person holding office under any Commonwealth or Foreign Government, or the seal of any department

of any Commonwealth or Foreign Government and relating to any matter to which the revenue laws apply.

(2) In every case where any question arises, in any proceedings before a Magistrate or in any court of law, whether any goods have been legally imported into Antigua and Barbuda, or whether the duties of import or excise on the same have been duly paid and satisfied, the burden of proving that the goods have been legally imported into Antigua and Barbuda, and that all such duties have been duly paid and satisfied, shall be upon the defendant or person alleging the affirmative of those propositions or either of them.

**Liability of vessel for penalty payable by owner or master.**

**19.** In every case in which any fine, penalty or costs are ordered by a Magistrate under the revenue laws to be paid by the master or owner of any vessel, the vessel shall be liable to be taken and dealt with for the satisfaction of such fine, penalty or costs, and such vessel may be seized and detained, and unless the amount so ordered to be paid shall be paid within one month after such seizure, may be sold in satisfaction of such amount, and the surplus, if any, after the expenses of the sale shall have been defrayed, shall be paid to the owner on application and, if no such application is made within six months after such sale, then into the Treasury for the use of Antigua and Barbuda:

Provided that, where the owner can prove that he is not a party to the offence, the vessel shall not be liable under this section.

**Payment and appropriation of penalties.**

**20.** All fines and penalties recovered and the proceeds of all sales of property sold as forfeited under or by virtue of the revenue laws shall be paid into the hands of the Comptroller of Customs to the Credit of a Revenue Defence Fund, which shall be appropriated as the Minister may direct.

**Remission of penalties.**

**21.** It shall be lawful for the Cabinet to remit the whole or any part of any fine, penalty or forfeiture incurred, or to suspend or forego any proceedings commenced or about to be commenced under the revenue laws, upon such terms, if any, as to them may seem expedient.

**22.** No prosecution shall be instituted under this Act without the consent of the Comptroller of Customs or head of the department. Institution of prosecutions.

SCHEDULE A

S. 14.

ANTIGUA AND BARBUDA

Know all men by these presents that we

of  
of  
and  
of  
are held and firmly bound to Our Sovereign Lady the Queen,  
Her heirs and successors in the sum of  
good and lawful money of Antigua and Barbuda  
for which payment to be well and truly made we bind ourselves  
and any and each of us our heirs, executors and administrators  
and the heirs, executors and administrators of any and each of  
us jointly and severally by these presents.

Sealed with our seals and dated this  
day of in the year of Our Lord  
one thousand hundred and

*(Signature and seal of principal).*

*(Signature and seal of first surety, if any).*

*(Signature and seal of second surety, if any).*

Whereas the above-named

shipped or exported from Antigua and Barbuda certain goods to  
wit (*here set out the particulars*) which are intended to be landed at  
the port of in

Now the condition of the above-written bond is such that if  
the said shall within one month  
from the date of such shipment or exportation or within such further  
time as the Comptroller of Customs may allow produce to the  
said Comptroller of Customs a certificate signed by the proper  
officer of the Customs at the said port stating that the goods

