

# Penalties Defined in PNDC 330

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## 1 Introduction

This document contains the clauses contained within *Customs, Excise and Preventive Service (Management) Act - 1993 (PNDC 330)*- the current legislation covering the operations of Ghana Revenue Authority Customs Division .

## 2 Clauses

### **Section 2 - Object And Function Of The Service**

The object and function of the Customs, Excise and Preventive Service is to collect and account for all duties, taxes, revenue and penalties payable under this Act.

### **Section - 44 - Duty Short-levied Or Refunded In Error**

(1) Where duty has been short-levied or refunded in error, the person who should have paid the amount short-levied or to whom the refund has been made in error shall, on written request made to that person by the proper officer, within thirty days of the receipt of the request pay the amount short-levied or refunded in error.

(2) In default of payment within thirty days the proper officer shall take adequate measures to ensure that the person does not transact any business with the Service, and shall refuse entry of goods consigned to the person or prevent a shipment by that person until the amount short-levied or refunded in error is paid; and the person **shall in addition incur a penalty of two hundred percent of the amount.**

### **Section - 45 - Goods Used Contrary To Authorised Purpose**

(1) If goods ordinarily liable to duty at a given rate are allowed by law to be entered or delivered at a lower rate of duty or free of duty on any special conditions or for use for some special purpose or because they are the property of or intended for use by a particular person or functionary, **they shall be forfeited** if

(a) the conditions are not observed,

(b) the goods are at any time within two years of the date of importation or delivery used for any purpose other than the specified purpose, or

(c) being goods entered or delivered because they are the property of or intended for use by some particular person or functionary, they are sold or transferred to any other person.

(2) Where the goods are forfeited, the importer or person obtaining delivery of the goods and a person who is knowingly concerned in their use contrary to the conditions or for some purpose other than that specified or in any way contrary to this section **shall incur a penalty in a sum equal to hundred percent of the duty payable on the goods.**

(3) The importer or person to whom the goods have been delivered shall on demand produce them to an officer or otherwise account for them to the satisfaction of the Commissioner within the period of two years, and if the

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importer or person fails to produce or account for the goods the importer or person **shall incur a penalty not exceeding hundred percent the duty payable.**

### **Section - 48 - Goods Imported For Temporary Use**

(1) The Commissioner may give permission to import any goods without payment of duty if the Commissioner is satisfied that the goods are imported for temporary use or purpose; only except that regulations may prohibit the importation of any goods or classes of goods under this section, or may provide that the goods shall be subject to a proportion of the duty as may be specified.

(2) Goods shall not be imported under this section unless

(a) the goods are exported within three months of the date of permission to import, and

(b) the person to whom the permission is given deposits with the Commissioner the amount of the duty on the goods, or gives security for the duty, as the Commissioner may determine.

(3) The Commissioner may, on provision of additional security where the Commissioner requires, extend the period of three months where the Commissioner is satisfied that the goods are the bona fide property or bona fide in the use of a person on a temporary visit to Ghana.

(4) If the goods are not exported within the relevant time, **the deposit held by the Commissioner shall be forfeited**, or if security has been given the importer shall pay to the Commissioner the full duties on the goods.

(5) If the goods are exported within the relevant time, the deposit shall be refunded or the security cancelled.

### **Section - 60 - Deficiency And Excess In Stock**

(1) A manufacturer or warehouse keeper who fails to produce to a proper officer on the officer's request any excisable goods manufactured or warehoused and not delivered or used in accordance with this Act shall immediately pay to the Commissioner the duties due on the goods, except in respect of a deficiency shown to the satisfaction of the Commissioner to be due to evaporation, accidental leakage or other unavoidable cause; and in addition to paying the duties and taxes on the goods the **manufacturer shall incur a penalty not exceeding three times the duties payable on the goods unaccounted for.**

(2) If at any time the quantity of excisable goods found in a factory or warehouse is greater than the quantity which ought, according to the books of the manufacturer or warehouse keeper to be there, the manufacturer or warehouse **keeper shall incur penalty not exceeding three times, the duties payable on the goods found in excess**, unless the manufacturer or keeper explains the excess to the satisfaction of the Commissioner.

### **Section - 71 - Default in the Submission of Sales Tax Returns**

(1) A person, an institution or an enterprise liable to the payment of excise duty and sales tax who defaults in submitting excise duty or sales tax returns or both on due dates **shall incur a pecuniary penalty of fifteen per centum of the amount due and payable for the month of default.**

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(2) Where a person, an institution or an enterprise liable to pay excise duty or sales tax fails to pay to the penalties specified in subsection (1), its license to manufacturers and recognition shall be withdrawn and the person, institution or enterprise shall cease to transact any business or deal in any manner with the Service until the penalties are paid.

### **Section - 72 - Failure to Pay Excise Duty and or Sales Tax on Due Dates**

A person, manufacturer, producer or an enterprise liable to pay excise duty or sales tax who fails to pay it to the Service, within the period prescribed under this Act shall incur a pecuniary penalty of fifteen percent of the amount due and payable and shall in addition pay on that amount interest at the prevailing commercial bank rate.

### **Section - 73 - False and Deceptive Tax Return**

A person who makes, assents to or acquiesces in the making of a false or deceptive statement in a return commits an offence and whether or not prosecuted is liable to a penalty of hundred percent of the amount of the excise duty or sales tax that should have been paid in respect of the period covered by the return.

### **Section - 77 - Distraint for Excise Duty or Sales Tax or Penalty Imposed**

(1) Where excise duty and or sales tax on any goods remains unpaid after the time within which it is payable, the Commissioner may in writing authorise the levying of a distress

(a) on the manufactured goods, chattels and effects of the manufacturer; and

(b) on the assets, property, buildings, factory, machinery, plant, tools, means of transport and communication, accessories, animals, and the goods used in Ghana in the manufacture, production, sale or distribution of any taxable goods, commodity or items found in any premises or any lands owned by or in use or in possession of the manufacturer or of a person on the manufacturer's behalf of or in trust for the manufacturer.

(2) The authority to distraint under this section shall be in the form contained in the First Schedule and shall be a warrant and authority to levy by distress the amount of any excise duties or sales tax due.

(3) The distress warrant so taken shall be executed on only the assets of the manufacturer and the Service shall take possession of the properties specified in subsection (1) exclusive of all liabilities.

(4) For the purpose of levying the distress a person expressly authorised in writing under the hand of the Commissioner may execute any warrant of distress and if necessary break open any building or place in the day-time and may call any Police Officer; and it shall be the duty of any police officer for assistance; and the police officer shall assist in the execution of the warrant of distress and in levying the distress.

(5) The distress so taken may, at the cost of its owner, be kept for fourteen days and if the amount due in respect of taxes, duties and or penalties and the cost and charges of and incidental to the distress are not then paid, the items specified under subsection (1) may be sold.

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(6) Out of the proceeds of sale there shall be paid first the cost or charges of and incidental to the sale and keeping of the distress and the next amount due in respect of duties, taxes and penalties, and the residue, if any, shall be payable to the owner of the things distrained on demand being made within one year of the date of sale.

(7) Where any property specified in subsection (1) seized in the execution of the distress warrant is under a mortgage, bill of sale, charged by way of security for a debt, or is in any way encumbered, the sale of the property shall be made subject to the prior interest of the Service which shall have precedence over all other interests.

(8) It is lawful in the exercise of the powers of distress conferred under this section, for the person to whom the authority is given to distrain on all things as specified in subsection (1) belonging to the manufacturer wherever they may be found.

### **Section - 90 - Prohibition Of Importation Of Over-age Vehicles**

(1) A motorcar or commercial vehicle of more than ten years old shall not be imported into the country.

(2) The master or agent of an aircraft or ship or carrier who contravenes subsection (1) **shall incur a pecuniary penalty of twenty-five million cedis on each imported motorcar or commercial vehicle and the vehicle shall be forfeited to the State.**

(3) An importer of a motorcar or commercial vehicle imported overland in contravention of subsection (1) **shall incur the pecuniary penalty provided under subsection (2).**

(4) A person shall not import a right-handed steering motor vehicle into the country.

(5) Despite the prohibition on the importation of over-age vehicles under subsection (1)

(a) an over-age vehicle that has already been imported into the country before the coming into force of this Act but not cleared; and

(b) an over-age vehicle that arrives in the country before 1st June, 1998,

is subject to the law on the **rate of penalty on over-age vehicles** in existence immediately before the coming into force of this Act.

### **Section - 92 - Forfeiture of Vehicle**

Without prejudice to sections 118 and 119 of this Act, any vehicle that remains unentered and uncleared within sixty days after discharge or in the case of overland vehicle, from the date it crossed the national border into the country **shall be forfeited to the State.**[As substituted by the Customs, Excise and Preventive Service (Management) (Amendment) Act, 2002 (Act 634), s. 2].

### **Section - 93 - Local Dealers to Furnish Details of Manufacture**

(1) A local dealer in a motor vehicle the importation of which is permitted under this Act shall furnish the Commissioner with the following information:

- (a) the year of manufacture of the vehicle;
- (b) the make or model of the vehicle;
- (c) the name and address of the manufacturer of the vehicle; and
- (d) the home delivery value of the vehicle.

**(2) A local dealer who fails or refuses to furnish the Commissioner with the information required under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five million cedis or to imprisonment not exceeding twelve months or to both, and without prejudice to any penalty imposed under this subsection is liable to an additional fine of thirty thousand cedis for every week during which the offence continues.**

(3) The Commissioner shall **dispose of forfeited vehicles**, on the advice of the Committee, which shall include auction sale and allocation to such institutions, bodies or persons as the Committee may suggest.

(4) The price at which a forfeited vehicle is disposed of, whether by auction sale, allocation or any other method, shall include duties and taxes but exclude the penalties exigible on the vehicle.

(5) Subsection (4) shall apply until 31st December, 2006.

### **Section - 94 - Disposal of Forfeited Vehicle**

(1) Subject to subsections (1) and (2) a motor vehicle forfeited to the State under this Act shall be disposed of by the Commissioner in the manner as the Minister may direct.

(2) Where a vehicle of more than ten years old is forfeited to the State under this Act, the vehicle shall be sold by the Commissioner to the steel mills as scrap metal for recycling under the supervision of the Commissioner.

### **Section - 96 - Arrival**

(1) An aircraft or ship arriving in Ghana

(a) shall come to a port, or any other place allowed by the Commissioner in special circumstances, without touching at any other place in Ghana; and

(b) on arriving at that port or place shall come as quickly up to the proper place of mooring or unloading as the nature of the port or place will admit, without touching at any other place; and

(c) in proceeding to a proper place, shall bring to at the station appointed for the boarding of aircraft or ships.

(2) An aircraft or a ship after arriving at a proper place of mooring or unloading shall depart from there, except

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- (a) directly to some other place of mooring or unloading approved by the proper officer; or
- (b) with the authority of the proper officer, directly to another port or to a place allowed by the Commissioner in special circumstances in Ghana; or
- (c) directly on a flight or voyage to a place outside Ghana in accordance with the provisions of this Act.

(3) An aircraft or ship after departing on a flight or voyage to a place outside Ghana shall bring to within Ghana except in accordance with this Act or with the permission of the proper officer, or for some cause which the master explains to the satisfaction of the Commissioner.

**(4) The master of an aircraft or ship which contravenes any provision of this section shall incur a penalty of one million cedis and the aircraft or ship shall be detained until payment is made.**

### **Section - 102 - Failure To Make Due Report**

If the master of an aircraft or ship or the agent fails to make due report, or if any of the particulars contained in the report are false, the master or the agent **shall incur a penalty of not less than one hundred thousand cedis and the goods not duly reported are liable to forfeiture**, unless the omission is explained to the satisfaction of the Commissioner.

### **Section - 105 - Master's Duties**

(1) The master or the agent shall, in relation to the aircraft or ship, its cargo, stores, baggage, crew, passengers, and flight or voyage

(a) answer immediately all questions the proper officer shall ask the master or agent; and

(b) produce all books and documents in the master or agent's custody or control that the proper officer may require.

(2) Before any person (unless permitted by the proper officer) disembarks, the master or the agent shall give to the officer who boards the aircraft or ship on arrival at a port or place a list containing the names of each passenger on board, and also, if required by the officer, the names of the master and of each officer and member of the crew.

(3) If the list of names is not correct and complete (unless the inaccuracy or omission is explained to the satisfaction of the Commissioner), the master or the **agent shall incur a penalty of two hundred and fifty thousand cedis.**

### **Section - 106 - Wrongly Breaking Bulk**

If any time after a ship or aircraft enters Ghana and without the knowledge and consent of the proper officer

(a) bulk is broken contrary to section 98 or 99,

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(b) an alteration is made in the stowage of the cargo so as to facilitate the unloading of a part of the cargo before arrival at a proper place of unloading, or not being a steamship, or an aircraft or ship specially allowed to do so, before report of the aircraft or ship is made, or

(c) goods are staved, destroyed or thrown overboard or a package opened,

the master or the agent **shall incur a penalty of one million cedis** unless cause is shown to the satisfaction of the Commissioner.

### **Section - 107 - Unloading Of Cargo**

(1) Except in accordance with any regulation made under this Act, or with the written permission of the proper officer or subject to conditions the officer may in a particular case impose

(a) a cargo shall not be unloaded from an aircraft or ship arriving from outside Ghana unless the proper officer has authorised its unloading, nor from any ship unless the cargo has first been duly entered;

(b) a cargo shall not be unloaded or removed from an aircraft or ship arriving from outside Ghana except between 7 a.m. and 6 p.m., or on Sundays or public holidays;

(c) a cargo shall not be transferred from an aircraft or ship arriving from outside Ghana into any vessel at such time as will cause the cargo to be afloat in the vessel on a Sunday or public holiday, or on any other day except between 7 a.m. and 6 p.m.

(d) a cargo (except cargo unloaded in a vessel to be landed in accordance with section 108) shall not be unloaded from an aircraft or ship arriving from outside Ghana except at an approved place of unloading or sufferance wharf approved for the purpose.

(2) If a cargo is unloaded contrary to this section or to the terms and conditions contained in any written permission from the Commissioner, **it is liable to forfeiture.**

### **Section - 108 - Removal Of Cargo**

(1) Except in accordance with regulations made under this Act, or with written permission of the proper officer or subject to any conditions the officer may in a particular case impose

(a) the vessel into which any cargo is put after being unloaded from a ship shall be a ship licensed under section 276;

(b) a cargo which has been unloaded from an aircraft or ship arriving from outside Ghana into any vessel to be loaded shall not be transhipped or removed into any other vessel before it is landed;

(c) cargo which has been unloaded from an aircraft or ship and put into any vessel to be landed shall be taken directly and without delay to an approved place of unloading or sufferance wharf approved for the purpose within the same port, and landed there without delay.

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(2) If cargo is removed contrary to this section or to the terms and conditions contained in any written permission from the Commissioner, **it is liable to forfeiture.**

### **Section - 109 - Deposit Of Cargo**

(1) Cargo when unloaded at an approved place of unloading or sufferance wharf approved for the purpose, and all cargo which has been put into a vessel to be landed in accordance with section 108 shall immediately on being unloaded or landed be conveyed into the care of the proper officer in the customs area, and deposited in a transit shed or in a State warehouse if the proper officer so requires.

(2) Cargo which the proper officer may consider unsuitable for storage in a transit shed or State warehouse shall be deposited in such place as the officer may direct, at the risk and expense of the importer, as if it was deemed to be unsuitable for storage in a State warehouse under section 116.

(3) Except in accordance with regulations made under this Act, or with the written permission of the proper officer or subject to any conditions the officer may in any particular case impose, a cargo shall not be removed from a part of the customs area or from the transit shed or State warehouse into which it has been conveyed unless it has first been duly reported and entered, and the proper officer has authorised its removal or delivery.

(4) The proper officer may, if the officer thinks the action necessary, require the agent of an aircraft or ship from which cargo has been landed into any transit shed, State warehouse, or other place of security to remove it to some other place of security selected by the proper officer; and if the agent fails to remove it when so required, **the agent shall incur a penalty of fifty thousand cedis** and the proper officer may have the cargo removed to another place of security at the expense of the agent.

(5) Cargo entered to be warehoused shall be removed by the importer by ways, in a manner and within such period that the proper officer shall direct to the warehouse for which it is entered, and delivered into the care of the officer in charge of the warehouse.

(6) The importer shall first enter into a bond for the due warehousing of the cargo, if the proper officer so requires.

(7) If the cargo is removed, deposited or dealt with contrary to this section or the terms and conditions contained in any written permission given by the Commissioner, **it is liable to forfeiture.**

### **Section - 110 - Liability Of Goods Other Than Cargo, Approved To Forfeiture**

(1) Goods whatsoever other than cargo duly reported as such shall be taken out of an aircraft or ship arriving from outside Ghana or delivered to a person aboard the aircraft or ship other than for the consumption or use of its crew or passengers except under the conditions (which may vary the procedure as to reporting the aircraft or ship as required by this Act) as may be prescribed in the Regulations or as directed by the Commissioner in a particular case.

(2) For the purpose of this section "goods" includes passengers' baggage, stores and any goods which may be taken on board an aircraft or ship arriving from outside Ghana while it is within Ghana.

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(3) If goods are taken out or delivered contrary to this section or to any conditions prescribed by the Regulations or to any directive of the Commissioner, the **goods are liable to forfeiture**

### **Section - 111 - Delivery Of Bullion Or Coin**

Despite anything contained in this Part, the proper officer may permit the delivery to an importer of bullion, currency notes or coin without entry but if the importer does not within forty-eight hours after their removal from the importing aircraft or ship deliver to the proper officer a full and true account of them, including their weight and value, **the importer shall incur a penalty of one million cedis.**