

# SEIZURE OF GOODS

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## PURPOSE

1. Seizure refers to the exercise of Custom’s statutory authority under section 268 of the Act to acquire physical possession of goods that are considered ‘forfeited’ to the State (listed under paragraph 3 below).
2. This document sets out the procedure for the seizure of goods used by the Customs Services; and circumstances in which seizure power bestowed on Customs officer under section 268 of the Customs Act 2014 (“the Act”) is activated.
3. Also set out in this document is the process those affected by the seizure will need to follow in order to seek a reconsideration of seizure from the Comptroller of Customs.
4. Those dealing in the exportation and importation of goods should therefore take note of what these circumstances are to avoid breaching the Act and any subsequent ramifications under the Act; including taking note of what avenue is available when a breach of the Act does occur.

## PROCEDURES

### Categories of Forfeited Goods

2. Before any goods can be seized it must first be established that such goods are forfeit in terms of section 267 of the Act. Once this has been established, the goods may then be seized under section 268.
3. Section 267 of the Act provides that the following goods are 'forfeited' to the State:
  - (a) Goods for which an offence has been committed under the following sections:
    - i. Section 214 – relates to counterfeit seals or marks;
    - ii. Section 241 – relates to offences in relation to entries;
    - iii. Section 242 – relates to offences in relation to declarations and documents;
    - iv. Section 246 – relates to possession of incomplete documents;
    - v. Section 249 – relates to offences in relation to importation or exportation of prohibited goods;
    - vi. Section 250 – relates to exportation of goods;
    - vii. Section 251 – relates to defrauding the revenue of Customs;
    - viii. Section 252 – relates to possession or custody of uncustomed goods or prohibited imports;
    - ix. Section 253 – relates to purchase, sale, exchange of uncustomed goods or prohibited imports;
    - x. Section 254 – relates to possession or control of concealed
  - (b) Goods dealt with in breach of section 66, 68, 71 or 72;
  - (c) Dutiable or prohibited goods found in the possession of any person who, when questioned under section 159 or 161, denied or failed to disclose the possession of those goods;
  - (d) Dutiable or prohibited goods found in the course of a search under section 158 or seized under section 172(1) or (2)(b);
  - (e) Dangerous items seized under section 172;
  - (f) Goods for which an erroneous statement, declaration, certificate or claim as to the country of which the goods are the produce or manufacture has been made or produced to any Customs officer;

*It is important to note that in order to be considered 'forfeited' to the State under (a) above, the importer/consignee must first be charged under any relevant sections noted under (i) to (x); and the court must then convict the importer/consignee of committing an offence under the section of the Act.*

- (g) Dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device that is lawfully in any place;
  - (h) Dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device after arrival in any Customs place from a point outside Samoa, not being goods specified or referred to in the inward report or baggage belonging to the crew or passengers and not being accounted for to the satisfaction of a Customs officer;
  - (i) Dutiable or prohibited goods found concealed in or on any craft, vehicle, bulk cargo container, pallet or a similar device, or any other thing;
  - (j) Goods in a package where those goods are not fully accounted for in the entry or declaration relating to that package;
  - (k) Dutiable goods or prohibited goods found so packed as to be likely to deceive Customs officers;
  - (l) Uncustomed goods that are found in any place;
  - (m) Goods imported that have been acquired in another country, whether by the importer or some other person, by an act which, if done in Samoa would have amounted to a crime involving dishonesty under the Crimes Act 2013;
  - (n) Goods exported, or for which an attempt to export has been made, that have been acquired in Samoa, whether by the exporter or some other person, by an act that amounts to a crime involving dishonesty under the Crimes Act 2013;
  - (o) Goods unlawfully exported or for which an attempt to so export has been made;
  - (p) Goods that have been unlawfully imported into Samoa.
4. It is important to note that forfeiture of goods also extends to the forfeiture of the following:
- (a) A case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation or exportation;
  - (b) A bulk cargo container, pallet or a similar device where that bulk cargo container, pallet or other similar device has been adapted for the purpose of concealing goods;
  - (c) A craft, vehicle or any other thing, including machinery or equipment on or in the craft or vehicle or thing, or any animal that is being or has been used for the carriage, handling, deposit or concealment of any goods, whether at or after the time of any alleged offence in relation to those goods; and
  - (d) A craft that is one for which an offence under section 227(1)(a) or (d) is committed; and that offence was committed to facilitate non-compliance with a requirement in any of sections 28 to 30 by a person or persons who arrived in Samoa having been brought (in that craft or in any other craft) from a point outside Samoa.

## Issuance of Seizure Notice

5. The first stage of this procedure is the Customs Services issuing a Seizure Notice (“Notice”) to officially declare the goods as forfeited to the State and therefore seized by Customs.
6. However, the Act does allow for the Customs Services to seize goods that fall under any of the sections listed under paragraph 3 above without issuing a Notice so long as the Notice is issued as soon as reasonably practical after the goods have been seized.
7. Further, a seizure is not invalidated or considered illegal if a Notice has not been issued so long as Customs undertook reasonable steps to issue the Notice as provided under section 269(3) of the Act.
8. The Notice issued by Customs should include reasons for the seizure as well as the following information:
  - The relevant provisions of section 267 of the Act that apply.
  - As full a description as is reasonably possible of the factual background on which Customs has relied on in seizing the goods under section 268.
  - A full description as to how that background is said to constitute reasonable cause for suspicion that the goods are forfeited, including reference to the relevant sections of the Customs Act, or any other Act administered by Customs.
  - Where multiple grounds for seizure exist, all grounds should be clearly spelt out on the seizure notice.
  - Where more than one item has been seized, the statutory provision and cause for suspicion of forfeiture that applies to each item.
  - A description of the remedies available to addressees, including reference to the relevant sections of the Act.
  - References to the relevant sections of Customs' policy on forfeiture and seizure, and either a recital of those provisions or a reference to where copies of the policy can be obtained.

## Release of seized goods on deposit

9. Section 271 of the Act allows for seized goods to be released by depositing with Customs a cash sum equal to the Customs value of the goods plus any duty payable. Points to note are:
  - only Comptroller or authorized officer has the authority to make the final decision whether to accept the deposit or not;
  - Goods, which have been seized as prohibited, cannot be released under this provision;
  - The goods must be released prior to their condemnation;
  - Goods, which may be the subject of prosecution action, cannot be released without the approval of the Comptroller; and

- the amount deposited is to be brought to charge after the condemnation period has expired.

## Review of Seizure

10. Once seizure has been executed, sections 274 to 278 of the Act provides for the person entitled to the goods to apply for a reconsideration of seizure. This can be made on the grounds that there was no legal basis for seizure, or that in the circumstances the applicant should be granted relief. Refer to *GEN0012 Review of Seizure SOP* for more information.

## References

### Legislation

#### Customs Act 2014

- Section 2 Interpretation
- Section 267 Goods forfeited
- Section 268 Procedure for seizure
- Section 269 Notice of seizure
- Section 271 Delivery of goods seized on deposit of value
- Sections 274/278 Appeals against seizure

### Other relevant policies and procedures

#### Procedures

- GEN0012 Review of Seizure

### Definitions

- **Condemn/condemnation** - Ownership of the goods transfers to the State. Goods cannot be disposed of until condemnation has been achieved.
- **Customs officer or officer** - A Customs officer or officer is a person appointed by the Chief Executive of Customs as a Customs officer for the purposes of the Act, or any other person employed by the Chief Executive who is declared by the Chief Executive to be a Customs officer for the purposes of the Act, whether at the time of appointment or otherwise.
- **Detain/detention** - Goods are held pending further inspection or investigation by Customs.
- **Dutiable goods** - Goods of a kind subject to duty within the meaning of this Act.

- **Exportation** - Except where otherwise expressly provided, means any shipment in any craft for transportation to a point outside Samoa, and "to export" and "exported" have corresponding meanings.
- **Exporter** - Means a person by or for whom goods are exported; and includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods on or at any time after entry for export and before they are exported.
- **Forfeited goods** - Means goods that are forfeit to the State under section 267 of this Act. Goods become forfeit to the State automatically as a result of some act or omission. Forfeiture applies to both imports and exports. Not all goods that are forfeit are seized.
- **Goods** - Means all kinds of movable personal property, including animals.
- **Importation** - In relation to any goods, means the arrival of the goods in Samoa in any manner, whether lawfully or unlawfully, from a point outside Samoa; and "to import" and "imported" have corresponding meanings.
- **Importer** - Means a person by or for whom goods are imported; and includes the consignee of goods and a person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the control of the Customs.
- **Person** - includes a corporation sole, and also a body of persons, whether corporate or unincorporate
- **Prohibited exports** - Goods the exportation of which is prohibited, whether conditionally or unconditionally, by or under section 92 of the Act.
- **Prohibited goods** - Means prohibited exports or prohibited imports.
- **Prohibited imports** - Goods the importation of which is prohibited, whether conditionally or unconditionally, by or under section 91 of the Act.
- **Uncustomed goods** - Goods on which duty has become due and payable but is unpaid.
- **Seize/seizure** - Customs formally takes possession of the goods. Only goods that are forfeited can be seized. Goods, which are legitimately imported or exported, cannot be seized.
- **Unlawfully exported** - Means exported in breach of the Act or any other Act.
- **Unlawfully imported** - Means imported in breach of the Act or any other Act.