

The Tourist (Duty-Free) Shopping System Act [3rd December 1974]

Regulation.

ARRANGEMENT OF SECTIONS Acts 46 of 1974/12 of 1985 Sch.

1. Short title.
2. Interpretation.
3. Tourist (duty-free) shop operator's licence.
4. Tourist (duty-free) shop operator's agency permit.
5. Tourist (duty-free) shop licence.
6. Time limit for application for renewal.
7. Refusal to grant or renew licence or permit.
8. Cancellation of licence or permit.
9. Right of appeal.
10. Bond may be required.
11. Operational charge.
12. Display centres.
13. Returns and records.
14. Tourist (duty-free) shop as private warehouse.
15. Commissioner may issue directions.
16. Application of Customs Act.
17. Sale of approved goods and consumables.
18. Conditions applicable to sale of approved goods and consumables.
19. False advertisement.
20. Failure to carry out directions.
21. Infringement of conditions.
22. Refusal to give explanation.
23. False declaration, etc.
24. Evading provisions relating to approved goods and consumables.
25. Failure to make returns.
26. Penalty recoverable from bond.
27. Prosecutions for offences.
28. Regulations.

Schedule - Approved Goods (Section 2)

1. Short title.

1. This Act may be cited as the Tourist (Duty-Free) Shopping System Act.

2. Interpretation.

2. (1) In this Act-

"approved goods" means any class or description of goods specified in the Schedule as approved goods;

"Commissioner" means the Commissioner of Customs and Excise;

"consumables" means-

(a) any spirits, wine or fermented, distilled or spirituous liquor; and

(b) any cigars cigarettes or tobacco, specified in the Schedule as consumables;

"diplomats" means persons entitled to immunities or privileges under section 10 of the Diplomatic Immunities and Privileges Act;

"licensed tourist (duty-free) shop" means any premises, or area in any premises, in relation to which a licence issued under the provisions of section 5 is in force;

"Minister" means the Minister responsible for finance;

"tourist (duty-free) shopping system" means the system permitted by this Act for the sale of goods for export free of customs or excise duty or of retail sales tax;

"visitor" means a person who is in Jamaica-

(a) on a visitor's visa; or

(b) intransit, from a place outside Jamaica to some other place outside Jamaica; or

(c) on a visit primarily for recreational purposes, so, however, that in any case, or on any occasion, where that person's status as a visitor is being considered for the purposes of this Act, a person shall not be deemed to be a visitor if-

(i) on that occasion his stay in Jamaica exceeds six months; or

(ii) during his stay, he works or performs any functions in Jamaica for payment or reward.

(2) Minister may, from time to time, by order amend the Schedule.

3. Tourist (duty-free) shop operator's licence.

3. (1) The Commissioner may, on application made in the prescribed manner and on payment of the prescribed fee, grant to any person who desires to operate on his own account a licensed tourist (duty-free) shop a licence (hereinafter referred to as a "tourist (duty-free) shop operator's licence") so to do.

(2) Any licence granted under this section may be granted on such terms and subject to such conditions as may be prescribed or as the Commissioner may in any case stipulate.

(3) Any licence granted under this section shall, unless Previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of March and may be renewed from year to year, so, however, that a licence issued or renewed during the month of March in any year shall, unless cancelled as aforesaid, continue in force until the 31st day of March of the next succeeding year.

4. Tourist (duty-free) shop operator's agency permit.

4. (1) The Commissioner may, on application made in the prescribed manner and on payment of the prescribed fee issue to any person who (not being the holder of, or an applicant for, a tourist (duty-free) shop operator's licence) is for the time being accredited in writing by the holder of, or an applicant for, a tourist (duty-free) shop operator's licence as an agent for the purposes of the tourist (duty-free) shopping system, a permit (hereinafter referred to as a "tourist (duty-free) shop operator's agency permit") to operate a tourist (duty-free) shop as agent for the tourist (duty-free) shop operator by whom he is accredited.

(2) Every person accrediting an agent for the purposes of subsection (1) shall keep a register in the prescribed form showing every person who is for the time being accredited for this purpose, and shall not grant any such accreditation without making the appropriate entry in this register, and if any person contravenes the requirements of this sub-section he shall, in respect of each contravention, incur a penalty of one hundred dollars.

(3) Any permit issued under this section may be issued subject to such terms and conditions as may be prescribed or as the Commissioner may in any case stipulate.

(4) Any permit issued under this section shall unless previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of March, and may be renewed from year to year, so, however, that any permit issued or renewed during the month of March in any year shall, unless cancelled as aforesaid, continue in force until the 31st day of March of the next succeeding year.

5. Tourist (duty-free) shop licence.

5. (1) The Commissioner may, on application made in the prescribed manner and on payment of the prescribed fee, grant to any person who is -

(a) the holder of, or an applicant for, a tourist (duty-free) shop operator's license, or

(b) the holder of, or an applicant for, a tourist (duty-free) shop operator's agency permit, a licence (hereinafter referred to as a "tourist (duty-free) shop license") in relation to any premises specified in the application, authorizing the use of such premises or any area in such premises as a licensed tourist (duty-free) shop where

approved goods or consumables may be sold under the tourist (duty-free) shopping system.

(2) Any licence granted under this section may be granted subject to such terms and conditions as may be prescribed or as the Commissioner may in any case stipulate.

(3) Any licence granted under this section shall, unless previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of March, and may be renewed from year to year, so, however, that any licence issued or renewed during the month of March in any year shall, unless cancelled as aforesaid, continue in force until the 31st day of March of the next succeeding year.

6. Time limit for application for renewal.

6. Every application for the renewal of a licence or a permit under this Act shall, unless the Commissioner otherwise permits, be delivered to the Commissioner not later than twenty-one days before the expiry of that licence or permit, as the case may be.

7. Refusal to grant or renew licence or permit.

7. (1) Subject to the right of appeal conferred by section 9 of this Act, the Commissioner may, in his discretion, refuse to grant, or to renew, any licence or permit under this Act, and shall so refuse if he is not satisfied that the applicant is, or satisfactory evidence is produced that the applicant is not, a fit and proper person to be the holder of a licence or permit, or where it appears that the applicant -

(a) not being a body corporate, is under eighteen years of age; or

(b) is not resident in Jamaica, or was not so resident throughout the six months immediately preceding the date of application; or

(c) being a body corporate is not incorporated in Jamaica; or

(d) has within the immediately preceding twelve months been refused the grant or renewal of a tourist (duty-free) shop operator's licence or a tourist (duty-free) shop operator's agency permit; or

(e) has been the holder of a tourist (duty-free) shop operator's licence or a tourist (duty-free) shop operator's agency permit which has been cancelled within the immediately preceding twelve months; or

(f) has been found to be knowingly concerned with evading or attempting to evade the provisions of this Act or of the Customs Act relating to the importation or exportation of any goods.

(2) Where the Commissioner refuses an application for the grant or renewal of a licence or a permit, he shall scan refund to the applicant any fee paid in respect of such application.

8. Cancellation of licence or permit.

8. The Commissioner shall cancel a licence or a permit Cancel under this Act if -

(a) the holder of the licence or the permit is convicted of any offence involving fraud or dishonesty; or

(b) the holder of the licence or the permit is found to be knowingly concerned with evading or attempting to evade the provisions of this Act or of the Customs Act relating to the importation or exportation of any goods, in connection with the tourist (duty-free) shopping system; or

(c) after due consideration and determination in the prescribed manner of any application made in the prescribed form-

(i) by any person; or

(ii) by any organization or association recognized by the Commissioner as representing operators of tourist (duty-free) shops, requesting that the licence or permit be cancelled, he is satisfied that the holder is no longer a fit and proper person to hold such licence or permit.

9. Right of appeal.

9. (1) In any case where the Commissioner cancels a licence under paragraph (c) of section 8, or refuses to grant or to renew any licence or permit under this Act, the holder of or the applicant as the case may be for, the licence or permit may, at any time within sixty days after the Commissioner's decision has been communicated to him, and on payment of such fee as may be prescribed, appeal in the prescribed manner to the Minister.

(2) On any such appeal the Minister may-

(a) confirm the cancellation or refusal; or

(b) on payment by the appellant of the prescribed fee, restore, grant or renew the permit or licence, as the case may be, and the decision of the Minister on any such appeal shall be final.

10. Bond may be required.

10. The Commissioner may require any applicant, as a condition precedent to the grant of a licence under this Act, to furnish a bond -

(a) in such sum; and

(b) with such number of sureties approved by the Commissioner,

as the Commissioner may from time to time specify in each case, conditioned on due payment of all duties and the due observance of the provisions of this Act and of any regulations made thereunder.

11. Operational charge.

11. (1) The Minister may, from time to time, by notice published in the *Gazette*, declare an operational charge to be paid in respect of every tourist (duty-free) shop.

(2) The operational charge shall be a percentage of the sum received as selling price of approved goods sold in a licensed tourist (duty-free) shop.

(3) Every holder of a tourist (duty-free) shop licence shall pay to the Commissioner in respect of every month during which he operates a licensed tourist (duty-free) shop, not later than fourteen days after the end of the month, the amount due as operational charge in respect of every licensed tourist (duty-free) shop operated by him.

(4) In this section "selling price" includes the value as assessed by the Commissioner of things exchanged or other consideration accepted by the operator of a licensed tourist (duty-free) shop or his agent as the price or on account of the price of approved goods or consumables purchased or delivered from a tourist (duty-free) shop.

(5) Every notice under this section shall be subject to affirmative resolution of the House of Representatives.

12. Display centres.

12. (1) Any holder of a tourist (duty-free) shop licence may apply to the Commissioner to register centres where approved goods and consumables may be displayed, subject to the prescribed conditions, for purposes other than sale.

(2) Any person who sells approved goods or consumables from a display centre or fails to comply with any prescribed conditions applicable to display centres shall be guilty of an offence and shall incur a penalty of one thousand dollars.

13. Returns and records.

13. (1) Every holder of a tourist (duty-free) shop licence shall-

(a) make such returns at such times; and

(b) keep such records in such form,
as may be prescribed or as may be required by the Commissioner.

(2) The Commissioner may vary the time for making any returns, if he thinks fit.

14. Tourist (duty-free) shop as private warehouse.

14. (1) Every licensed tourist (duty-free) shop shall be deemed to be a private warehouse for the purposes of the Customs Act and the Excise Duty Act.

(2) The Commissioner may permit any approved goods or any consumables which, but for the provisions of this Act, would be liable to customs duty, excise duty, consumption duty or retail sales tax, to be removed from any warehouse, or customs area, or private excise warehouse or factory licensed under the Excise Duty Act without payment of such duties or tax and deposited in a licensed tourist (duty-free) shop, subject to the prescribed conditions, for purposes of export under the tourist (duty-free) shopping system.

(3) No provisions of this section shall confer on any approved goods or consumables any exemption from customs examination either prior to deposit in, or after delivery from, a licensed tourist (duty-free) shop.

15. Commissioner may issue directions.

15. (1) The Commissioner may issue any directions he considers necessary for the better regulation and control of the operations of a licensed tourist (duty-free) shop.

(2) The Commissioner may require a written explanation from any person in charge of a licensed tourist (duty-free) shop, or his servant employed in such shop, or his agent, in order to enquire into any matter affecting the administration and control of such shop.

16. Application of Customs Act.

16. The provisions of Part IV of the Customs Act shall apply *mutatis mutandis* to the warehousing of goods under the provisions of this Act.

17. Sale of approved goods and consumables.

17. Subject to the provisions of this Act and of any regulations made thereunder, any approved goods or consumables warehoused in a licensed tourist (duty-free) shop may be sold free of any customs, excise or consumption duties, or of any retail sales tax to which such goods would, but for the provisions of this Act, be liable.

18. Conditions applicable to sale of approved goods and consumables.

18. The sale of any approved goods or consumables warehoused in a tourist (duty-free) shop shall be subject to the following conditions, that is to say-

(a) approved goods and consumables shall be sold only for export;

(b) approved goods shall be sold only to visitors and diplomats;

(c) subject to any prescribed requirements in respect of packaging or otherwise, approved goods may be delivered to the visitor at the time of purchase; and

(d) consumables shall not be delivered to the purchaser until and unless satisfactory proof is furnished to the vendor that the purchaser is, at or about the time of the delivery of the consumables, departing from Jamaica.

19. False advertisement.

19. (1) Any person who, not being the holder of a tourist (duty-free) shop operator's licence or a tourist (duty-free) shop operator's agency permit under this Act, with intent to deceive, displays any advertisement indicating in any manner that-

(a) any premises used by him is a licensed tourist (duty-free) shop; or

(b) approved goods or consumables may be obtained from him or through him under the tourist (duty-free) shopping system; or

(c) he is authorized to sell goods free of customs duty, excise duty, consumption duty or retail sales tax, shall be guilty of an offence and shall incur a penalty of four thousand dollars.

(2) In this section "advertisement" shall have the meaning assigned to it in section 2 of the Advertisements Regulation Act.

20. Failure to carry out directions.

20. Any person who, without reasonable excuse, fails to carry out any direction given in writing by the Commissioner relating to the operation of a tourist (duty-free) shop shall be guilty of an offence and shall incur a penalty of one thousand dollars.

21. Infringement of conditions.

21. Any person who, without reasonable excuse, infringes any term or condition subject to which his licence or permit was granted, shall be guilty of an offence and shall incur a penalty of one thousand dollars.

22. Refusal to give explanation.

22. Any person who, when required by the Commissioner to give a written explanation of any matter relating to the operation of a place used as a private warehouse under this Act, without reasonable cause, refuses or fails to give a satisfactory written explanation, or to give any explanation, shall be guilty of an offence and shall incur a penalty of one thousand dollars.

23. False declaration, etc.

23. Any person who, in any matter relating to the tourist (duty-free) shopping system or to the operation of any retail tourist (duty-free) shop, with intent to deceive-

(a) makes, or causes to be made, any false declaration, whether oral or written; or

(b) uses, or causes to be used, any false certificate; or

(c) makes, or causes to be made, any alteration or falsification in any document after that document has been officially issued, shall be guilty of an offence and shall incur a penalty of two thousand dollars.

24. Evading provisions relating to approved goods and consumables.

24. Any person who, knowingly and with intent to defraud the Government of Jamaica of revenue—

(a) acquires possession of; or

(b) carries, removes, deposits, conceals or harbours; or

(c) deals in any manner, otherwise than in accordance with the provisions of this Act or of any regulations made thereunder, with any approved goods or any consumables on which customs, excise, or consumption duties or any retail sales tax due thereon has not been paid, shall be guilty of an offence and shall incur a penalty for each such offence of five hundred dollars or treble the value of such goods, at the election of the Commissioner, and, in addition, all such goods shall be forfeited.

25. Failure to make returns.

25. Any person who without reasonable excuse fails or rebuses—

(a) to make such returns at such times; or

(b) to keep such records in such form; or

(c) to embody in any return any such information, as may be prescribed or as may be required by the Commissioner shall be guilty of an offence and shall incur a penalty of five hundred dollars.

26. Penalty recoverable from bond.

26. Without prejudice to any other form of recovery, any penalty incurred under the provisions of this Act may be recovered by the Commissioner by the application, in whole or in part, of any bond furnished pursuant to section 10.

27. Prosecutions for offences.

27. (1) Any offences under this Act may be prosecuted, and any penalty incurred under, or forfeiture imposed by this Act may be sued for, prosecuted and recovered summarily in a Resident Magistrate's Court, and any sum of money payable under this Act may be recovered and enforced in a summary manner in a Resident Magistrate's Court on the complaint of any officer.

(2) In this section "officer" has the meaning assigned to it by section 2 of the Customs Act.

28. Regulations.

28. (1) The Minister may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations-

(a) prescribing the form and manner in which applications shall be made for any licence or permit which may be granted under this Act, and the forms of such permits or licences;

(b) prescribing any fees to be paid under this Act;

(c) prescribing the nature of the notices, emblems or other instruments to be displayed in tourist shops;

(d) prescribing the method of packaging of approved goods and consumables;

(e) prescribing any other matter or anything which may be, or is required to be, prescribed.

(2) Notwithstanding anything contained in section 29 of the Interpretation Act, any regulations made under this Act may provide in respect of a breach of any of the provisions thereof that the offender shall be liable to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

SCHEDULE (Section 2)

Approved Goods

1. Binoculars;
2. Electric Calculators-
3. Photographic cameras with accessories;
4. Chinaware -bone and porcelain;
5. Clocks;
6. Cosmetics;
7. Cutlery- sterling silver and stainless steel;
8. Crystalware;
9. Earthenware;
10. Figurines -bronze, ivory or quartz;
11. Figurines -china or porcelain;

12. Hi-fi components;
13. Jewellery and articles consisting of or incorporating pearls;
14. Mechanical lighters for cigars, cigarettes and pipes;
15. Perfumery;
16. Pipes, cigar and cigarette holders;
17. Projectors;
18. Portable radios;
19. Record changers or record players;
20. Electric shavers;
21. Sweaters and cardigans, pullovers or similar knitted outerwear of angora, mohair, cashmere or similar mixtures of wool;
22. Silverware—sterling silverplate, Sheffield plated and antique reproductions, Siamese, Portuguese and Indian sterling silver;
23. Table linen – Madeira, Irish, embroidered, hand-painted, cut-work;
24. Tape recorders;
25. Telescopes;
26. Toilet lotion or toilet waters;
27. Watches.

Consumables

1. Cigarettes –locally manufactured or imported in containers of not less than 200 units each;
2. Cigars – Jamaican cigars in boxes of not less than 25;
3. Tobacco;
4. Spirits, liqueurs and wines (except miniatures) imported with minimum contents 11 ounces per bottle;

5. Spirits or liqueurs (miniatures)– whether assorted or not, locally manufactured or imported, in sealed containers of not less than six bottles; each bottle containing not less than one ounce per bottle;

6. Spirits, liqueurs or wines-locally manufactured with minimum contents 11 ounces per bottle.