

Consultation Document

New Customs Legislation for South Georgia & the South Sandwich Islands

Summary

As part of its legislative review programme the Government of South Georgia & the South Sandwich Islands (GSGSSI) is reviewing the legal framework for the Territory, including its legislation on Customs.

This consultation document seeks stakeholder views on the draft Customs legislation for GSGSSI.

The aim of the draft legislation is to put into place a simple Customs framework that gives GSGSSI the necessary powers to effectively administer a Customs regime should GSGSSI decide that it is appropriate to impose Customs duties or prohibit the import or export of certain goods. This will replace the existing Customs legislation that dates back to 1943 and is no longer fit for purpose.

Responses to the consultation should be sent to legal@gov.gs by 1st July 2016.

Introduction

The current Customs legislation for GSGSSI dates back to 1943 (as amended in 1955, 1957, 1959 and 1960). It relates to a time when there was still a whaling and sealing industry on South Georgia and a sizeable workforce.

The legislation is now out of date. It is far more detailed and complex than SGSSI now requires. It imposes a range of import and export duties, it prescribes a process for the arrival and landing of passengers and goods, a customs warehouse, coastal trading provisions, smuggling, and general provisions relating to customs officers, powers, offences etc. It anticipates that there will be permanent residents and trading businesses that trade outside and within SGSSI. The related criminal provisions and penalties are out of date and the language in the legislation is archaic and no longer suitable.

Current Customs Administration

The current Customs legislation is not applied and in its place custom and practice has developed. It is not clear what activities are carried out as 'Customs' work. The regime set out in the existing legislation is impossible for GSGSSI to deliver with its current resources and infrastructure. GSGSSI requires Customs legislation that is simple and flexible to apply and enforce.

Amending the existing legislation further has been briefly considered but the changes required to reflect the Customs requirement for South Georgia today are so significant that very little of the current legislation would remain. It therefore makes more sense to prepare new legislation which sets out a clear and fit-for-purpose Customs framework.

Proposed Customs Legislation

The proposed Customs Ordinance will repeal the existing Customs legislation for SGSSI. Few elements of the existing Customs regime will be retained. In its place there will be a Customs framework that will enable GSGSSI to administer Customs and allow it to respond flexibly and proportionately to changes in the circumstances of SGSSI that may require a Customs response.

The draft legislation sets out the following framework.

Officers

The draft legislation would establish the post of Collector of Customs who would be responsible for overseeing the administration of Customs. It is likely that the person appointed to this role would be the Financial Secretary for GSGSSI. It would also establish Custom Officers to carry out the functions set out in the draft. Customs Officers are likely to be the GSGSSI Government Officers, who currently discharge this role.

Power to impose duties and to prohibit goods

The draft gives the Commissioner for GSGSSI the power, by making an Order, to impose duties on the import, export, production, sale and supply of specified goods. An Order made by the Commissioner would have to specify the rate of duty, any exemptions from duty, and may also give detail about how the duty is to be collected. Flexibility is given to 'tailor-make' the Order to suit the circumstances of SGSSI. Customs Officers will be responsible for collecting any such duties.

The Commissioner would also be given the power to make an Order prohibiting the import, export, production, sale or supply of specified goods. Similarly to above the Commissioner may provide for exemptions. Flexibility is again given to 'tailor-make' the Order to reflect the circumstances of SGSSI.

Currently GSGSSI do not impose any duties on any goods and have not prohibited any goods.

Enforcement

The Commissioner would be given the power, by Order, to require persons entering or leaving SGSSI to make a Customs declaration, and to establish a system for inspections and clearance. A fee can be charged for this and flexibility is again built in to 'tailor-make' the Order to fit the circumstances of SGSSI.

Currently visiting vessels are required to make a Customs declaration in relation to passengers, fuel and cargo and are cleared by the Government Officers. Yachts are charged a Customs clearance fee of £10, other vessels are charged £35 plus an hourly rate of £25 or £40 depending on whether the work is carried out

within normal working hours. It is proposed that the power to require a general declaration and customs clearance and for a fee to be charged be retained.

The Commissioner may make Orders for the seizure and disposal of goods and an associated right of appeal.

Customs Officers would be given the power to require persons to answer questions, make declarations and provide information or documents. Customs Officers would also have the power to search persons or property where they suspect there may be a breach of a Customs Order. Intimate searches cannot be carried out unless in accordance with regulations made by the Commissioner. No such regulations are currently envisaged.

Offences

The draft sets out a number of Customs offences. These are intentionally failing to pay Customs duty, knowingly breaching a provision of a Customs Order, failing without reasonable excuse to comply with a requirement imposed by a Customs Officer or obstruct or cooperate with a Customs Officer.

The maximum penalty for these offences is a fine of £10,000 and/or 5 years' imprisonment.

Civil Penalties

The Commissioner may by regulations put in place a system of civil penalties as an alternative to prosecuting an offence.

Arrest and Detention

Customs Officers would have the power to arrest and detain a person suspected of committing an offence under this legislation.

The Commissioner will make regulations about the maximum period of detention, the procedure to be followed in making arrests and the conditions of detention and conveyance of persons and any other matters.

Procedures

The Commissioner by regulation may prescribe procedures to be followed if necessary. This does not prevent the Collector of Customs and the Customs Officers from putting in place practical administrative arrangements.

Review and Appeal

The draft legislation provides for a review of decisions by the Customs Officers by the Collector of Customs and an appeal to the Magistrates Court against any decision of the Collector of Customs.

Responding to Consultation

We encourage and welcome the engagement of our stakeholders. If having read the draft Customs Ordinance and this consultation document you wish to comment on the proposals you should send your comments by email to legal@gov.gs. The deadline for comments is 1st July 2016.

FAQs

Why does GSGSSI need Customs controls?

GSGSSI needs the power if necessary to control the import, export, production, supply and sale of goods in relation to its territory. Control may be by means of charging a duty on goods or prohibiting them.

What goods would GSGSSI charge duty on or prohibit?

Currently GSGSSI does not charge any customs duty on any goods and no goods are currently prohibited. There are no plans to introduce any customs duty or prohibit any goods at this time. It is possible that GSGSSI might want to introduce duties or prohibit goods in the future, subject to consultation, and therefore the Ordinance provides for this possibility.

Will vessels still be required to complete a Customs declaration and be cleared by the Government Officers?

This is currently required: visiting vessels are required to make a Customs declaration in relation to passengers, fuel and cargo. As drafted, the new Ordinance will retain the power to require vessels to make a general customs declaration. It is helpful for GSGSSI to know how many people, how much fuel (and what type) and what goods a vessel has on board for customs purposes.

Who will enforce any Customs requirements?

As happens now the Government Officers will act as Customs Officers and will have the necessary powers to carry out this role. These include powers to get information, to search and if necessary to seize goods and arrest and detain people suspected of committing an offence.

If there a way I can challenge the decisions of Customs Officers if they decide to exercise their powers?

Yes, there will be a right to a review of their decisions by the Collector of Customs and a right to appeal to the Court if you are still aggrieved.

Can I be prosecuted if I break any of the Customs requirements?

You can be prosecuted if you intentionally evade paying customs duty, knowingly breach a provision of a Customs Order, or fail to comply with the requirements of a Customs Officer, obstructs or fails to cooperate with a Customs Officer without reasonable excuse.

Can I be arrested and detained if I commit an offence?

Yes - it is proposed to give the Customs Officers power to arrest and detain a person if they suspect that person to have committed a Customs Offence.

What is the maximum penalty if I do commit an offence?

The maximum penalty is a fine of £10,000 and/or 5 years imprisonment. The judge will have discretion to impose a lesser penalty taking into account all the circumstances of the offence and the offender.