

CHAPTER 8.05

NEVIS AIR AND SEA PORTS AUTHORITY ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Declaration of seaports and airports

PART II

ESTABLISHMENT, CONSTITUTION AND MANAGEMENT

4. Establishment of Authority
5. Appointment of members
6. Custody and use of Seal
7. Service of notice
8. Meetings
9. Disclosure of interest
10. Power to appoint Committees
11. Power to delegate
12. Remuneration of members
13. Protection of the Authority
14. Protection of members
15. Policy directions

PART III

STAFF

16. Appointment of General Manager, Port Manager, and Secretary
17. Appointment of officers and servants
18. Transfers to the Authority
19. Establishment of Pension Scheme
20. Content of the Pension Scheme

PART IV

DUTIES AND GENERAL POWERS, PROVISIONS RELATING TO LAND, PROPERTY AND UNDERTAKINGS OF THE AUTHORITY

21. Powers and duties
22. Compulsory acquisition of land
23. Power to vest reclamations in the Authority
24. Apparatus etc. not subject to distress

PART V

FINANCIAL PROVISIONS

25. Funds of the Authority
26. Application of funds of the Authority
27. Temporary investment of funds
28. Power to borrow
29. Power to issue debentures
30. Temporary borrowing
31. Guarantee of borrowing by the Authority
32. Reserve Fund
33. Application of surplus
34. Estimates in respect of financial year
35. Accounts
36. Audit
37. Auditors' report
38. Report by the Authority to Minister

PART VI

RESPONSIBILITY OF THE AUTHORITY AS A WAREHOUSEMAN

39. Liability for loss of goods etc.
40. Limitation of liability for loss etc. of goods deposited in cloakroom
41. Burden of proof in proceedings under section 39

PART VII

DUES, CHARGES AND TARIFF BOOK

42. Dues and charges due
43. Dues and charges in respect of ship and aircraft
44. Payment of dues and charges
45. Appointment of agents
46. Security for charges
47. Detention of ship by authorised officer
48. Certificate of authorised officer required before requesting clearance
49. Power to determine conditions, and rates of carriage or warehousing
50. Port Manager may retain goods until freight is paid
51. Consignor or consignee
52. Duty to deliver description of goods
53. Authorised officer's power to levy charges, etc.
54. Effect of non-renewal of goods
55. Application of the proceeds of sale
56. Authority to prepare and publish Tariff Book

PART VIII

SPECIAL PROVISIONS IN RELATION TO PORTS

57. Supply of information
58. Power of General Manager in relation to ship and aircraft

- 59. Power in respect to wrecks, etc.
- 60. Fire on board ship
- 61. Accidents to be reported to Minister
- 62. Non-liability for demurrage
- 63. Execution of orders
- 64. Liability of the Authority for acts, etc., of Managers
- 65. Regulations

PART IX

PROVISIONS RELATING TO OFFENCES

- 66. Damaging property likely to endanger life
- 67. Persons endangering safety of operations
- 68. Failure to comply with directions under section 57, etc.
- 69. Failure to give information or giving false information
- 70. Refusing entry to authorised officer
- 71. False returns
- 72. Evasion of dues and charges
- 73. Demanding improper account
- 74. Miscellaneous offences
- 75. Powers of arrest
- 76. Place of trial
- 77. General Manager may confer power on officers

PART X

LEGAL PROVISIONS

- 78. Notice claims
- 79. Limitation
- 80. Limitation on execution against property of the Authority
- 81. Overpayment or underpayment of charges

PART XI

MISCELLANEOUS PROVISIONS

- 82. Transfer of assets
- 83. Land vested in Authority to be free from rates and taxes
- 84. Exemption from taxes
- 85. Authority may appoint constables
- 86. Power to shoot animals found trespassing
- 87. Suspected persons
- 88. Removal of persons and things
- 89. Bonding warehouse

- 90. Proceedings for offences
 - 91. Proof
 - 92. Recovery of sums
 - 93. Moneys recovered to be paid into account of the Authority
- FIRST SCHEDULE: The Limits of the Sea Port of Charlestown
- SECOND SCHEDULE: The Nevis Air and Sea Ports Authority Act (Tariff Book) Regulations

CHAPTER 8.05

NEVIS AIR AND SEA PORTS AUTHORITY ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN AUTHORITY TO BE KNOWN AS THE NEVIS AIR AND SEA PORTS AUTHORITY; TO PROVIDE FOR COORDINATED AND INTEGRATED SYSTEMS OF AIRPORTS AND SEAPORTS SERVICES; TO TRANSFER TO AND VEST IN THE AUTHORITY THE ASSETS, LIABILITIES AND FUNCTIONS OF THE AIRPORT DIVISION OF THE MINISTRY OF COMMUNICATIONS AND WORKS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Nevis Air and Sea Ports Authority Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“Administration” means the Nevis Island Administration;

“aircraft” means any machine which flies, whether propelled by mechanical means or not, and includes any description of balloon;

“airport” means the airport of Newcastle in Nevis or any other airport as may be prescribed from time to time by the Minister in accordance with section 3;

“animal” means any animate thing of any kind except a human being;

“authorised officer” means a person authorised by the General Manager or by a Port Manager to exercise the powers or perform the duties in respect of which the expression is used;

“Authority” means the Nevis Air and Sea Ports Authority established by section 4;

“beacon” means any light, mark or sign used as an aid to navigation, other than a lighthouse or buoy and includes aeronautical beacons and such other aids used in aviation;

“buoy” includes any floating light, mark or sign used as an aid to navigation, other than a lighthouse;

“Chairperson” means the Chairperson of the Authority and includes any person for the time being performing the functions of Chairperson;

“Charges” means any charges or rates levied by the Authority under this Act and includes any rent, but does not include dues;

“constable” means a constable appointed by the Authority pursuant to the provisions of section 85;

“dues” includes pilotage dues, port dues, tonnage dues levied under this Act but does not include rates;

“ferry” means any vessel plying within the limits of a seaport or the approaches thereto for the purpose of the carriage of goods or passengers;

“financial year” means such period of twelve months as the Authority with the approval of the Minister may determine to be its financial year;

“General Manager” means the General Manager of the Authority appointed under section 16 and includes any person appointed to act as General Manager;

“goods” means all kinds of movable property including animals;

“Master”, in relation to a ship, means any person having charge for the time being of that ship;

“member” means a member of the Authority;

“Minister” means the Minister responsible for Finance in the Administration;

“owner”, when used in relation to—

- (a) goods, includes any consignor, consignee, shipper or agent of the owner for the sale, custody, loading, handling, unloading or delivery of such goods;
- (b) any ship or aircraft, includes any part owner, charterer, operator, consignee or mortgagee in possession thereof or any duly authorised agent of such person;

“perishable goods” means goods liable to rapid deterioration and, in particular, includes fish, fruits, vegetables, meat, poultry, game, butter, eggs, milk, cheese, plants, small animals or any other thing which the Authority may by notice published in the *Gazette* declare to be perishable goods;

“person in charge”, in relation to an aircraft, means the pilot or other person having for the time being charge, command or control of the aircraft, and in relation to a ship, the master or other person having for the time being charge, command or control of the ship;

“port” means an airport or a seaport;

“Port Manager” means a manager of an airport or a seaport appointed under section 16 and includes every person appointed to act as Port Manager;

“premises” includes any immovable property, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority;

“purposes of the Authority” means any purpose necessary or desirable for the performance of the services, or the provision of any facilities, which the Authority is authorised to perform under this Act;

“regulations” means the regulations made under this Act;

“seaport” means—

- (a) the port of Charlestown the limits of which are set out in the First Schedule; and
- (b) any other port which may be declared to be a seaport for the purposes of this Act by an order made by the Minister in accordance with section 3;

“ship” includes any ship, vessel, tug or boat of any kind whether the same is propelled by steam or otherwise is towed;

“Tariff Book” means the Tariff Book prepared and published under section 56;

“vehicle” means any vehicle towed or propelled by any means for the portage of goods or persons otherwise than by sea.

(2) In this Act—

- (a) a reference to a section or schedule is a reference to a section of or schedule to this Act unless it is indicated that reference to some other enactment is intended; and
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision (including a Schedule) in which the reference occurs unless it is indicated that reference to some other provision is intended.

Declaration of seaports and airports.

3. The Minister—

- (a) may, by order published in the *Gazette*, declare any port to be a seaport or airport for the purposes of this Act;
- (b) shall in such order specify the limits of that port.

PART II

ESTABLISHMENT, CONSTITUTION AND MANAGEMENT

Establishment of Authority.

4. (1) There is hereby established, for the purposes of this Act, a body corporate to be called the Nevis Air and Sea Ports Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall have power as such to enter into contracts, to sue and be sued in its corporate name, and to acquire, hold, mortgage, lease, and dispose of all kinds of property movable and immovable, and to do and perform all such acts and things as a body corporate may by law do and perform, subject to the provisions of this Act.

Appointment of members.

5. (1) The Authority shall consist of not less than five or more than seven members appointed by the Minister.

(2) The Minister shall designate one member as Chairperson of the Authority.

(3) Every member shall be appointed by the Minister for such period not exceeding three years, as the Minister may direct and shall, on ceasing to be a member, be eligible for reappointment.

(4) Where a member ceases to be a member for any reason the Minister may appoint another member in his or her place for the remainder of the time for which the former member would have served but for his or her ceasing to be a member.

(5) In the event of incapacity from illness or other temporary cause or of the temporary absence from Nevis of any member, the Minister may appoint some other person to act as a temporary member during the time such incapacity or absence continues.

(6) The Minister may at any time revoke the appointment of any member if he or she considers it expedient so to do.

(7) The appointment of any member and the termination of office of any person as a member, whether by death, resignation, revocation, effluxion of time or otherwise, shall be published in the *Gazette*.

Custody and use of Seal.

6. (1) The Seal of the Authority shall be kept in the custody of the Chairperson or of the General Manager and may be affixed to instruments pursuant to a resolution of the Authority and in the presence of the Chairperson, or in his or her absence a member authorised as in subsection 2, and the General Manager.

(2) The Seal of the Authority shall be authenticated by the signature of the Chairperson, or in his or her absence a member authorised in writing by resolution of the Authority, and the General Manager, and such seal shall be officially and judicially noticed.

(3) All deeds, instruments, contracts and other documents other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the Chairperson or General Manager.

Service of notice.

7. (1) Service of any notice, order or other document required or authorised under this Act or any regulation to be served on any person by the General Manager or any authorised officer may be served—

- (a) by delivering it to the person;
- (b) by leaving it at the usual or last known place of abode of the person; or
- (c) by sending it by registered post addressed to the person at his or her usual or last known address.

(2) Service of any notice, order or other document required or authorised under this Act or any regulation to be served on the General Manager or any authorised officer may be served—

- (a) by delivering the notice or other document to the General Manager or to the authorised officer; or
- (b) by leaving it at the office of the General Manager; or
- (c) by sending it by registered post addressed to the General Manager at the office of the Authority.

Meetings.

8. (1) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the Chairperson may determine.

(2) The Chairperson may at any time call a special meeting of the Authority, and shall call a special meeting within seven days of a requisition for that purpose addressed to him or her by any three members to consider the matters contained in such requisition.

(3) The Chairperson shall call a special meeting of the Authority if directed by the Minister to do so.

(4) The decision of the Authority with regard to any question shall be determined by a majority vote of the members present and voting at a meeting of the Authority at which a quorum is present, and in any case when the votes of the members present in regard to any question shall be equally divided, the Chairperson presiding at the meeting shall have, in addition to a deliberative vote, a second or casting vote.

(5) In the absence of the Chairperson from any meeting the members present shall elect one of their number to be Chairperson of that meeting.

(6) Three members shall form a quorum at a meeting of the Authority.

(7) Minutes of the proceedings of each meeting of the Authority shall be kept in such manner as the Authority may determine and shall be confirmed by the Chairperson as soon as practicable thereafter at a subsequent meeting.

(8) The Authority may have in attendance any one or more persons at any particular meeting of the Authority for the purpose of assisting or advising the Authority, but no person so attending shall have any right to vote at any such meeting.

(9) Subject to the provisions of this section, the Authority shall have power to regulate its own proceedings.

Disclosure of interest.

9. If any member is present at a meeting at which a matter is considered or proposed to be considered in which he or she has directly or indirectly, any financial or other interest, he or she shall, as soon as practicable after the commencement of the meeting, disclose that fact and he or she shall not take further part in the consideration of that matter or vote on any question with respect to that matter and, if the majority of the other members present shall so determine he or she shall withdraw from the meeting during such consideration.

Power to appoint Committees.

10. (1) The Authority may appoint a committee of the Authority to examine and report to it on any matter whatsoever arising out of or connected with any of its functions under this Act.

(2) Any such committee shall consist of at least one member together with such other persons, whether members or not, whose assistance or service the Authority may desire.

(3) Where persons, other than members, are members of a committee appointed under this section, or where any person attends a meeting of the Authority under the provisions of section 8.(8), the Authority may, with the approval of the Minister, by resolution declare the remuneration and allowance of such persons, and such sums shall properly be payable out of the funds of the Authority.

(4) The Authority may by resolution reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the Authority may think fit.

Power to delegate.

11. (1) Subject to the provisions of this Act, the Authority may delegate to any member or committee of the Authority the power and authority to carry out on its behalf such duties as the Authority may determine.

(2) The delegation referred to in subsection (1) shall not preclude the carrying out of the duties by the Authority itself.

Remuneration of members.

12. There shall be paid from the funds of the Authority to the Chairperson, and other members such, if any, remuneration, fees or allowances as the Authority, with the approval of the Minister, may determine.

Protection of the Authority.

13. The validity of any act done or proceedings taken under this Act shall not be questioned on the ground of—

- (a) the existence of any vacancy in the membership of, or any defect in the constitution of, the Authority;
- (b) the failure by a member to comply with the provisions of section 9; or
- (c) any omission, defect or irregularity not affecting the merits of the case.

Protection of members.

14. No personal liability shall attach to any member in respect of anything done or suffered in good faith under the provisions of this Act, and any sums of money, damages or costs which may be recovered against such member in respect of any act or thing done bona fide for the purpose of carrying this Act into effect shall be paid out of the funds of the Authority.

Policy directions.

15. (1) The Minister may, after consultation with the Chairperson, give to the Authority directions of a general character as to the policy to be followed in the performance of its functions in relation to matters appearing to him or her to concern the public interest, and the Authority shall give effect to any direction so given.

(2) The Authority shall furnish the Minister with such returns, accounts and other information as he or she may require with respect to the property and activities of the Authority, and shall afford to him or her facilities for verifying such information in such manner and at such times as he or she may reasonably require.

PART III

STAFF

Appointment of General Manager, Port Manager, and Secretary.

16. (1) The Authority shall, at such salary and upon such terms and conditions as it may determine, appoint—

- (a) a General Manager;
- (b) such number of Port Managers as it thinks fit; and
- (c) a secretary:

Provided that such appointments shall be subject to the approval of the Minister, and the General Manager and the Port Manager of any port may be one and the same person.

(2) The General Manager shall be the chief executive officer of the Authority and shall exercise all the functions entrusted to him or her by this Act and any regulations and (whether or not he or she is a member) shall be present at all meetings of the Authority unless he or she has obtained leave of absence from the Chairperson or is incapacitated by illness or other cause from attending such meetings.

(3) In the event of the absence from duty of—

(a) the General Manager; or

(b) the Port Manager of any port,

the Authority may, by instrument in writing and with the approval of the Minister appoint any person to act as General Manager, or Port Manager, as the case may be, during the period of such absence upon such terms and conditions as it may determine.

(4) Any person who is appointed under subsection (3) may exercise all the powers and all the duties exercisable or to be performed by the General Manager or by a Port Manager, as the case may be, or as many of such powers and duties as may be specified in such instrument.

Appointment of officers and servants.

17. (1) The Authority may appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers and servants as it deems necessary for the proper carrying out of its functions under this Act.

(2) Any person appointed or employed under this section shall perform such duties as may be assigned to them by the General Manager, or by the Port Manager of the port at which the person is employed.

Transfers to the Authority.

18. (1) The Governor-General acting with the advice of the Public Service Commission may approve the transfer of any officer in the Public Service to any office with the Authority and upon such transfer such officer shall become a member of the Pension Scheme referred to in section 19, and where such officer's transfer becomes effective before the establishment of such Scheme, he or she shall become a member of the Scheme within one year of its establishment.

(2) A transfer described in subsection (1) shall be on such terms as may be acceptable to the Public Service Commission, the Authority and the officer concerned and the pension accruing to the officer at the time of his or her transfer shall be preserved.

(3) Subject to subsection (4), the Governor-General may, acting on the advice of the Public Service Commission, and with the approval of the Authority and the officer concerned, make appropriate arrangements for the transfer on secondment of any officer in the public service to the Authority.

(4) Where a transfer on secondment contemplated by subsection (3) is effected, the Administration shall make such arrangements as may be necessary to preserve the rights of the officer so transferred to any pension, gratuity, or other allowance for which he or she would have been eligible had he or she remained in the public service.

Establishment of Pension Scheme.

19. The Authority may, within a period of three years of the commencement of this Act, with the approval of the Minister, provide for and establish a Pension Scheme for the benefit of its officers and employees.

Content of the Pension Scheme.

20. Without prejudice to the generality of section 19, the Pension Scheme may enable the Authority to—

- (a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, its officers and employees;
- (b) establish contributory superannuation schemes, and establish and contribute to superannuation funds for the benefit of its officers and employees;
- (c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such officer or employee, or his or her widow or widower, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted;
- (d) give donations or subscriptions to charitable institutions, sick funds, benevolent funds and other objects calculated to benefit its officers and employees.

PART IV**DUTIES AND GENERAL POWERS, PROVISIONS RELATING TO LAND,
PROPERTY AND UNDERTAKINGS OF THE AUTHORITY****Powers and duties.**

21. (1) Subject to the provisions of this Act, the Authority is hereby empowered to provide in accordance with the provisions of this Act and any regulations, a co-ordinated and integrated system of airports, seaports, lighthouses and port services and to levy charges and dues for the use of the facilities and services provided.

(2) Subject to the provisions of this Act, the Authority may for the purpose of performing any of its functions under this Act, do anything and enter into any transaction which in the opinion of the Authority, is necessary to ensure the proper performance of its functions.

(3) In particular and without prejudice to the generality of the provisions of subsections (1) and (2), it shall be the duty of the Authority—

- (a) to operate the ports as appears to it best calculated to serve the public interest;
- (b) to regulate and control navigation within the limits of such ports and their approaches;
- (c) to maintain, improve and regulate the use of such ports and the services and facilities therein as it considers necessary or desirable;

- (d) to provide for such ports and the approaches to the ports such air traffic control services, beacons, buoys and other navigational services and aids as it considers necessary or desirable;
- (e) to exercise the duties and functions relating to shipping, aviation and navigation exercisable under the provisions of any other law; and
- (f) to carry out exclusively the loading, unloading, landing and carrying of all goods to and from all ships and aircraft in a port:

Provided that the Authority may, with the approval of the Minister, authorise in writing any person, corporation or other body to carry out the functions stated in this paragraph subject to such conditions, and restrictions as the Authority may consider desirable.

Compulsory acquisition of land.

22. (1) The Governor-General may, when land is required for the purposes of this Act, acquire either by private treaty or compulsorily under the provisions of the Land Acquisition Act, Cap. 10:08 any lands, and may exercise all powers under the Act in relation to any acquisition or intended acquisition of such lands.

(2) The Governor-General may, upon such terms and conditions as he or she may determine, vest any lands acquired in the Authority by order declaring that such lands shall vest in the Authority as from the date of the Order.

(3) The Order referred to in subsection (2) shall be published in the *Gazette* and shall vest the lands absolutely in the Authority as from the date of the Order, free from any encumbrances of any nature whatsoever.

(4) The Governor-General may, by Order, vest in the Authority any lands owned by the Crown upon such terms and conditions as he or she may deem fit.

(5) With the approval of the Administration, the Authority may, by Order vest any lands owned by it in the Crown or any statutory authority.

(6) Nothing herein contained shall prejudice the right of any person having any interest in any lands acquired under the provisions of the Land Acquisition Act:

Provided however, that compensation for any lands acquired under this section shall be determined in accordance with the provisions of section 19 of the Land Acquisition Act.

Power to vest reclamations in the Authority.

23. (1) Any wharf, dock or other public work constructed by the Administration along, across or extending out from the foreshore within the limits of any port and the land reclaimed from the sea, and any part of the foreshore situate within the limits of the port, may be vested in the Authority upon such terms and conditions as the Minister may determine.

(2) Nothing in this section shall be taken to derogate from or interfere with the use of private rights and the payment of adequate compensation under any enactment providing for compensation.

Apparatus etc. not subject to distress.

24. When any apparatus, fixture or fitting is placed in or upon any premises not being in the possession of the Authority for the purposes of carrying out the functions of the Authority, such apparatus, fixture or fitting shall not be subject to distress or be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession the same is.

PART V**FINANCIAL PROVISIONS****Funds of the Authority.**

25. (1) The funds of the Authority shall consist of—

- (a) the sums received by the Authority in respect of dues and charges levied and payable in pursuance of the provisions of this Act or any other Act and any regulations;
(Amended by Act 5 of 2008)
- (b) such sums as the Authority may borrow for meeting any of its obligations or discharging its functions;
- (c) sums from time to time received by or falling due to the Authority in respect of repayment of any loan made by the Authority;
- (d) investments made by the Authority and the income accruing therefrom;
- (e) all other sums that may become payable to or vested in the Authority in respect of any matter incidental to its powers and duties.

(2) All sums referred to in subsection (1) shall be paid into and placed to the credit of an account at a Bank approved by the Minister.

Application of funds of the Authority.

26. The receipts of the Authority on revenue account in any financial year shall be applied in payment of the following charges—

- (a) the interest and sinking fund contributions on any loan payable by the Authority;
- (b) the sums required to be paid to the Administration towards the repayment of any loan made by the Administration to the Authority;
- (c) the remuneration and allowances of members and of any committee of the Authority;
- (d) the salaries, remuneration, allowances, pensions, gratuities of the officers and servants, employed in or in connection with the activities carried on by the Authority;
- (e) the working and establishment expenses of, and the expenditure on, or provision for the maintenance of the property and installations of the Authority, and the discharge of the functions of the Authority properly chargeable to revenue account;

- (f) such sums as the Authority may deem appropriate to set aside in respect of obsolescence and depreciation or renewal of the property or installations of the Authority, having regard to the amount set aside out of revenue under paragraphs (a) and (b);
- (g) the cost of any portion thereof, of any new works, plant or appliances not being a renewal of property of the Authority, which the Authority may determine to charge to revenue account;
- (h) sums to be appropriated to the reserve fund;
- (i) any other expenditure authorised by the Authority with the concurrence of the Minister and properly chargeable to revenue account.

Temporary investment of funds.

27. (1) Funds standing to the credit of the Authority and not immediately required to be expended in the meeting of any obligations or commitments may be invested in such manner as the Minister may approve.

(2) All interest from such investment shall be paid to the credit of the Authority's account as provided in section 25(2).

Power to borrow.

28. (1) Subject to the provisions of this Act, the Authority may from time to time borrow funds by way of overdraft or otherwise from any source with the consent of the Minister.

(2) The power of the Authority to borrow under this section shall not be exercised unless a proposal in writing showing—

- (a) the amount and particulars of the proposed loan;
- (b) the rate of interest to be paid on the loan;
- (c) the source or sources from which the loan is to be obtained;
- (d) the purposes to which the money proposed to be borrowed is to be applied; and
- (e) the manner in which the loan is to be repaid,

is first submitted to and approved by the Minister.

Power to issue debentures.

29. (1) Subject to subsection (2), the Authority may, with the approval of the Minister, borrow or raise money by the issue of debentures or debenture stock, or other security, for the following purposes—

- (a) the raising of funds for the efficient exercise of its functions and meeting its obligations;
- (b) the repayment of any funds borrowed or raised by the Authority;
- (c) the provision of working capital.

(2) The total amount of moneys borrowed or raised under this section shall not at any time exceed such sum, having regard to the assets of the Authority, as the Minister determines.

Temporary borrowing.

30. The Authority may, with the consent of the Minister, from time to time borrow by way of a temporary loan or overdraft from a bank or otherwise, any sum which it may temporarily require—

- (a) for the purpose of defraying expenses pending the receipt of revenues recoverable by it in respect of the period of account in which those expenses are chargeable; or
- (b) for the purpose of defraying, pending the receipt of money due in respect of any loan authorised to be raised under section 28(1), expenses intended to be defrayed by any such loan.

Guarantee of borrowing by the Authority.

31. (1) The Minister may, with the approval of the Nevis Island Administration, guarantee, in such manner and on such conditions as he or she may think fit, the payments of the principal and interest of any moneys borrowed by the Authority in exercise of the powers conferred by sections 28, 29 and 30.

(2) Where the Minister is satisfied that there has been default in the payment of any principal moneys or interest guaranteed under the provisions of this section he or she shall direct the repayment out of the Nevis Island Consolidated Fund of the amount in respect of which there has been such default.

(3) The Authority shall make to the Treasurer of the Administration at such times and in such manner as the Minister may direct, payments of such amounts as may be so directed in or towards repayment of any sums issued in fulfilment of any guarantee given under this section, and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as regards different sums and as regards interest for different periods.

Reserve Fund.

32. The Authority shall establish a reserve fund which shall be dealt with and applied in accordance with any direction which may from time to time be given to the Authority by the Minister.

Application of surplus.

33. Any balance at the end of the financial year resulting from the activities carried on by the Authority under this Act which is available after making full allowance for the matters enumerated in section 26 shall be paid to the credit of the Nevis Island Consolidated Fund.

Estimates in respect of financial year.

34. (1) The Authority shall each year prepare and submit to the Minister the estimates of revenue and expenditure of the Authority for the next financial year.

- (2) Supplementary estimates may be adopted at any meeting of the Authority.
- (3) Estimates shall be prepared in such form as the Minister may direct.

Accounts.

35. (1) The Authority shall keep proper accounts and records of its transactions and affairs and shall ensure that all payments out of its funds are properly authorised and correctly made and that adequate control is maintained over the incurring of expenditure and a statement of accounts shall be kept in respect of each financial year.

(2) The statement of accounts in respect of each financial year shall present a true and fair view of the financial position of the Authority and of the results for the financial year to which it relates, of the operations of the Authority.

Audit.

36. (1) The accounts of the Authority shall be audited in each financial year by one or more persons who publicly carry on the profession of accountancy (hereinafter referred to as the auditors) appointed by the Authority.

(2) The Authority and the officers and servants of the Authority shall give to the auditors appointed to audit the accounts under subsection (1) all books, deeds, contracts, accounts, vouchers or other documents which they may deem necessary to call for, and may require any person holding or accountable for any such document to appear before them or any one of them and make a signed statement in relation thereto and may require from such person such information as they or any one of them deem necessary.

(3) Any person to whom a request to produce a document or to enter an appearance and make and sign a statement or furnish information, who fails, without reasonable excuse, to comply with such request, commits an offence under this Act and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars or to a term of imprisonment not exceeding three months.

Auditors' report.

37. The auditors appointed by the Authority under subsection (1) of section 36 shall, as soon as practicable and not later than three months after the accounts have been submitted for audit, send an audited statement of accounts and their report in respect of their audit for the financial year to the Authority.

Report by the Authority to Minister.

38. (1) The Authority shall, as soon as practicable and not later than one month of the receipt of the accounts and report as provided in section 37 submit a report to the Minister containing—

- (a) a statement of the accounts of the Authority;
- (b) a report on the activities of the Authority during the preceding financial year in such form as the Minister may direct.

(2) The Minister shall cause a copy of the report referred to in subsection (1)(b) together with a copy of the audited statement of the accounts and the auditor's report thereon to be laid on the table of the Nevis Island Assembly as soon as may be after the receipt.

PART VI

RESPONSIBILITY OF THE AUTHORITY AS A WAREHOUSEMAN

Liability for loss of goods etc.

39. (1) Subject to the provisions of this Act, or of any contract, the Authority shall not be liable for the loss, misdelivery or detention of, or damage to, goods—

- (a) delivered to, or in the custody of the Authority except where such loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the Authority or of any employee; or
- (b) accepted by the Authority for carriage or warehousing where such loss, misdelivery, detention or damage occurs otherwise than while the goods are in transit or being warehoused and is not caused by the want of reasonable foresight and care on the part of any person employed by or on behalf of the Authority.

(2) The Authority shall in no case be liable for any loss, misdelivery, detention or damage arising from—

- (a) act of God;
- (b) act of war;
- (c) seizure under legal process;
- (d) act or omission of the consignor, consignee, depositor or of the servant or agent of any such person;
- (e) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause, whether partial or general;
- (f) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
- (g) deficiency in the contents of unbroken packages; or
- (h) insufficient or improper packing or leakage from defective drums, containers or packages.

(3) The liability of the Authority for the loss, misdelivery or detention of or damage to goods accepted by the Authority for warehousing in relation to which an account has been given under section 52(1) and which is false in any material particular shall be based on the true value of the goods or on the value thereof as calculated in accordance with the description contained in the false account, whichever is less.

Limitation of liability for loss etc. of goods deposited in cloakroom.

40. (1) The liability of the Authority for any loss or misdelivery of, damage to, or delay in the delivery of any goods deposited in a cloakroom shall not in any case exceed one hundred dollars unless at the time of such deposit the person depositing the goods declared that the value thereof exceeded that amount and paid or agreed to pay, such additional charge as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the Authority shall not in any case exceed such declared value.

(2) For the purpose of this section the expression “cloakroom” means any place provided by the Authority as a facility for the temporary deposit of goods by persons using the services provided by the Authority.

Burden of proof in proceedings under section 39.

41. In any proceedings brought under the provisions of section 39 against the Authority, it shall not be necessary for the person claiming damages or compensation to prove how the loss, misdelivery, detention or damage to goods was caused.

PART VII

DUES, CHARGES AND TARIFF BOOK

Dues and charges due

42. All dues and charges payable under this Part shall be paid at the time specified in the regulations in relation thereto, and where no such time is specified any dues and charges shall be paid on demand; all dues and charges shall be deemed to have been demanded when they fall due in accordance with the regulations.

Dues and charges in respect of ship and aircraft.

43. Subject to the provisions of this Act and the regulations, there shall be payable to the Authority in respect of—

- (a) every ship which enters a port for the purpose of loading or discharging cargo or embarking or disembarking passengers or which occupies an anchorage or berth within a port; or
- (b) every aircraft which uses a port,

the dues and charges in respect of such ship or aircraft and for any service performed or facility provided in respect of such ship or aircraft in accordance with the Tariff Book.

Payment of dues and charges.

44. All dues and charges payable under this Part shall be paid at the prescribed time, and where no such time is prescribed such dues and charges shall be paid on demand; all dues and charges shall be deemed to have been demanded when they become payable.

Appointment of agents.

45. The person in charge of every ship or aircraft shall appoint an agent who shall be responsible for the payment of the dues and charges without prejudice to the recovery by the agent from the owner or person in charge of the ship or aircraft of such sums paid on behalf of any such ship or aircraft.

Security for charges.

46. An agent who intends to incur a liability in respect of any of the dues and charges mentioned in section 43 may deposit with the Authority, or guarantee such sums as are, in the opinion of the Authority reasonable, having regard to the amount or probable amount of the sums which such agent shall be liable to pay to the Authority.

Detention of ship by authorised officer.

47. (1) Where any sums in respect of dues and charges mentioned in section 42 are owing in respect of any ship or aircraft, any authorised officer may, with such assistance as he or she deems necessary, enter such ship or aircraft and may arrest the ship or aircraft and the tackle, apparel, fixtures, furniture and equipment thereof, and may detain it until the said sums are paid.

(2) Where, after such arrest, such sums remain unpaid for a period of seven days the authorised officer may cause the ship or aircraft and the tackle, apparel, fixtures, furniture and equipment thereof arrested to be sold, and out of the proceeds of such sale he or she shall retain the amount necessary to meet the expenses of the detention and sale thereof and shall after paying the amount of any sums which are owing to the Authority, deliver the balance to the agent.

Certificate of authorised officer required before requesting clearance.

48. Before the person in charge of any ship or aircraft in a port shall obtain outward clearance from that port he or she shall first obtain from an authorised officer a certificate stating that—

- (a) all dues and charges in respect of the ship or aircraft and all penalties and expenses to which the ship or aircraft and the person in charge are liable under this Act or regulations have been paid or secured to the satisfaction of the authorised officer;
- (b) he or she has complied with the provisions of this Act and the regulations.

Power to determine conditions, and rates of carriage or warehousing.

49. The Authority may, subject to the provisions of this Act and any regulations, determine—

- (a) the conditions upon which goods shall be carried or warehoused and different conditions may be determined in different cases;
- (b) the charges for the carriage or warehousing of goods by the Authority and for any other service or facility performed or provided by the Authority.

Port Manager may retain goods until freight is paid.

50. (1) Where a person who has been appointed under section 45 to be an agent responsible for the payment of dues and charges in respect of a ship or aircraft from which any goods have been landed at a port and accepted by the Authority for carriage or warehousing or for delivery to the consignee, notifies the Port Manager of that port in writing that the dues or other charges payable to the agent to the amount specified in the notice, remain unpaid in respect of the goods, the Port Manager shall retain the goods and refuse delivery of them to the consignee or any other person until—

- (a) the payment of any dues and charges in respect of the goods and customs duties thereon;
- (b) the production of a receipt for, or a release from the payment of such amount signed, or purporting to be signed, by or on behalf of the agent.

(2) Where the Port Manager causes any goods to be delivered in respect of which a notice has been given under subsection (1) to a person producing such receipt or release, or making such payment, as is referred to in paragraph (a) or (b) of that subsection, the Authority shall be freed from all liability to any person in respect of the goods.

(3) Nothing in this section shall be construed as requiring any person to take into the custody of the Authority any goods which would not otherwise be receivable by the Authority under the provisions of this Act or any regulation or as requiring the Port Manager to inquire into the validity of any claim made for dues or any other sums made in any notice given by an agent under subsection (1).

Consignor or consignee.

51. The consignor of, or the person tendering any goods for carriage or warehousing by the Authority, or the consignee of, or person receiving any goods which have been carried or warehoused by the Authority, shall be liable in accordance with the regulations under this Part for the charges for such carriage or warehousing and any other services performed or facility provided in respect of the goods by the Authority.

Duty to deliver description of goods.

52. (1) The consignor of, or the person tendering any goods for carriage or warehousing by the Authority and, on request by an authorised officer, the consignee of, or person receiving any goods which have been carried or warehoused by the Authority, shall deliver to the authorised officer an account in writing signed by such consignor, person or consignee, as the case may be, containing such description of the goods as may be sufficient to enable such officer to determine the charges payable in respect of the carriage or warehousing or any other service performed or facility provided in respect of the goods.

(2) An authorised officer may, for the purpose of verifying the documents delivered under subsection (1) require such consignor, person or consignee, as the case may be, to permit him or her to examine such goods.

(3) If such consignor, person or consignee fails to deliver the documents referred to in subsection (1) or to permit such goods to be examined as required in subsection (2), an authorised officer may, in respect of the goods which are tendered for carriage or warehousing by the Authority, refuse to accept the goods for such carriage or warehousing unless in respect thereof a charge not exceeding the highest payable for any class of goods is paid.

(4) If in respect of goods which have been carried or warehoused by the Authority, any document delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorised officer may refuse to deliver such goods unless in respect of warehousing or carriage of the goods, a charge not exceeding double the highest charge payable for any class of goods is paid, without prejudice to any penalty that may be imposed under any other section of this Act.

Authorised officer's power to levy charges, etc.

53. In respect of all goods in the custody of the Authority, an authorised officer shall be entitled to levy such charges as may be determined in accordance with the regulations made under this Part, and he or she may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and

preservation of the goods, and the Authority shall have a lien on the goods, for such charges and any other expenses and shall be entitled to seize and detain the goods until such charges are fully paid.

Effect of non-renewal of goods.

54. (1) Subject to the provisions of this section and without prejudice to the provisions of section 53, where any goods other than perishable goods are in the custody of the Authority on premises of the Authority and are not removed from such premises within a period of fifteen days from the time when the goods were placed in or on such premises, the Port Manager of the port at which the goods are held shall cause a notice to be served on the owner or any other person appearing to the Port Manager to be entitled thereto requiring him or her to remove the goods.

(2) Where—

- (a) the owner of any goods in the possession of the Authority is not known and no person appears to be entitled thereto; or
- (b) the notice referred to in subsection (1) cannot for any reason be served; or
- (c) there has been a non-compliance with the provisions of any notice served under subsection (1),

the General Manager may, subject to the provisions of subsection (3), within a reasonable time not being less than six weeks after the goods were accepted by the Authority sell the goods by public auction.

(3) The General Manager shall, not less than seven days before the sale by public auction, publish in the *Gazette* a notice containing particulars of the goods to be sold and an indication of the circumstances in which they are to be sold.

(4) Where the goods under this section are perishable goods the Port Manager may direct their removal within such shorter period, not being less than twenty-four hours after the landing thereof as the General Manager thinks fit and he or she may sell the goods without giving the said notice but shall as soon as practicable inform the owner or such other person appearing to be entitled thereto of the action that has been taken.

(5) No imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the law relating to customs duty and any tax under any enactment.

Application of the proceeds of sale.

55. The proceeds of any sale under section 54 shall be applied by the Authority as follows, and in the following order—

- (a) in the payment of any duty payable in respect of the goods;
- (b) in the payment of the expenses of sale;
- (c) in payment of the sums due to the Authority in respect of the carriage or warehousing or facility provided in respect of the goods;
- (d) in payment of freight and other claims of which notice under the provisions of this Act has been given,

and by paying the surplus, if any, to the owner or the person entitled thereto on demand, and if no such demand is made within one year from the date of the sale of the goods, by paying the surplus into the funds of the Authority, whereupon all rights to the same of such owner or person shall be extinguished.

Authority to prepare and publish Tariff Book.

56. (1) Subject to the approval of the Minister, the Authority shall cause to be prepared and published in accordance with subsection (2) a Tariff Book containing—

- (a) the conditions, dues and charges—
 - (i) for the carriage or warehousing of goods;
 - (ii) for any other service or facility performed or provided by the Authority;
- (b) all matters which under this Act or any regulation are required to be contained therein; and
- (c) such other matters as the Authority may think fit.

(2) The Tariff Book—

- (a) shall be published in the *Gazette*; and
- (b) shall have effect, from the date of publication in the *Gazette* or from such later date as may be specified therein.

(3) There shall be available for public inspection at every port office a copy of the Tariff Book containing all amendments for the time being in force.

PART VIII

SPECIAL PROVISIONS IN RELATION TO PORTS

Supply of information.

57. (1) The person in charge of any ship or aircraft arriving in a port shall, if requested by an authorised officer, produce to that officer—

- (a) the papers and the register of the ship or aircraft;
- (b) a list of the passengers, if any, showing particulars of their sex and occupation;
- (c) a list showing the deaths, if any, which have occurred during the voyage or flight;
- (d) a list showing the stowaways, if any, on the ship or aircraft,

and shall also supply such information in relation to the ship or aircraft, passengers and cargo thereof, as such officer may reasonably require.

(2) The person in charge of any ship or aircraft departing from a port shall, if requested by an authorised officer, produce to that officer and supply such information in relation to the ship or aircraft and the persons and goods carried thereon as the authorised officer may reasonably require.

Power of General Manager in relation to ship and aircraft.

58. (1) Notwithstanding the provisions of any regulations made under section 65 the General Manager or an officer authorised by him or her may—

- (a) direct where any ship or aircraft shall be berthed, moored, anchored or parked and the method of anchoring of ships and parking of aircraft within the port and the approaches to the port;
- (b) direct the removal of any ship or aircraft from any berth, station, anchorage or position and the time within such removal is to be effected within the port and the approaches to the port; and
- (c) regulate the moving of ships and aircraft within the port and the approaches to the port.

(2) In case of any refusal or neglect or of any failure to comply with any direction given under subsection (1), the Authority may, without prejudice to any proceedings being instituted against any person, cause to be done all such acts as are in its opinion reasonable or necessary for the purpose of carrying out such direction and may hire and employ such persons as it considers proper and necessary for such purpose.

(3) All expenses incurred in doing such acts shall be paid and borne by the person or persons who refuse, neglect or fail to comply with any direction given under subsection (1).

Power in respect to wrecks, etc.

59. (1) The General Manager may—

- (a) remove any wreck in or other obstruction to the port or its approaches, or any timber, raft or other thing floating or lying in a port, which endangers, or obstructs, or is likely to endanger or obstruct, the free navigation of the port or the use of any facility therein;
- (b) in the case of urgent necessity take any action in a port which in his or her opinion may be necessary to prevent any danger to life or limb or damage to goods or premises;
- (c) enter upon any ship or aircraft or into any building in a port if it is necessary for him or her to do so in the performance of any duty under this Act or any regulation or if he or she has reasonable grounds for believing that an offence against this Act or any regulation has been, or is about to be committed.

(2) The owner of any wreck or other thing removed by the General Manager under the provisions of subsection (1)(a) shall, without prejudice to any other action which may be taken against him or her, be liable to pay the reasonable expenses of such removal; such wreck or other thing shall be detained by the Port Manager until such expenses and customs duties, dues or charges payable in respect thereof are paid.

(3) Where any wreck or thing is removed under the provisions of paragraph (a) of subsection (1) and the expenses of removal have not been paid within seven days of such removal, the General Manager may cause such wreck or thing to be sold by public auction and shall out of the proceeds of sale retain the amount necessary to meet the expenses of such removal, detention and sale and any customs duties, dues or charges payable in respect thereof and shall deliver the balance, if any, to the person appearing to him or her to be entitled thereto.

Fire on board ship.

60. (1) In the event of fire breaking out on board any ship or aircraft in a port, the General Manager or Port Manager of that port may proceed on board such ship or aircraft with such assistance and persons as to him or her seem fit, and may give such orders as to him or her seem necessary for scuttling such ship or destroying such aircraft or for removing such ship or aircraft or any other ship or aircraft, to such place as to him or her seem proper to prevent in either case danger to other ships or aircraft and for the taking of any other measures that appear to him or her expedient for the protection of life or property.

(2) If such orders are not forthwith carried out by the person in charge of such ship or aircraft the General Manager or Port Manager may himself or herself proceed to carry them into effect.

(3) Any expenses incurred in the exercise of the powers conferred by subsections (1) and (2) shall be recoverable from the person in charge or the owner of the ship or aircraft concerned as a civil debt.

Accidents to be reported to Minister.

61. (1) Where any accident occurs in any port, then if that accident—

- (a) is attended, or is of a kind usually attended, with loss of human life or with serious injury to person or property;
- (b) involves any collision between ships or aircraft; or
- (c) is of such other kind as the Minister may specify,

the General Manager shall, as soon as practicable, give notice of the occurrence of the accident to the Chairperson for submission to the Minister.

(2) The General Manager may order such enquiry into any accident which occurs in a port as he or she may think fit and shall order such enquiry as the Minister thinks fit into any such accident when so required by the Minister.

(3) The General Manager shall submit a report on any accident which occurs at the port and which is inquired into, setting out, *inter alia*, the probable cause of such accident and the steps if any, which have been taken or he or she has directed shall be taken with a view to avoiding a repetition thereof.

(4) The General Manager shall make a return to the Chairperson for submission to the Minister in such form and at such intervals as the Minister may direct, of all accidents, occurring in any port, whether or not such accident is attended with injury to any person.

Non-liability for demurrage

62. The Authority shall not be liable for any demurrage or other charge which may occur or be due on any ship or aircraft howsoever such demurrage or charge may have been caused.

Execution of orders

63. (1) All acts, orders or directions under this Part or the regulations thereunder authorised to be done or given by a particular officer of the Authority may be done or given by any other officer of the Authority authorised in writing on that behalf.

(2) Any person authorised in writing, in accordance with subsection (1), to do any acts or give any orders or directions may call to his or her aid such assistance as is necessary.

Liability of the Authority for acts, etc., of Managers

64. The Authority shall be liable for any act, omission or default of the General Manager, or a Port Manager, except where the act, omission or default is a result of *mala fide* or wilful neglect.

Regulations

65. (1) The Authority may, with the approval of the Minister, make regulations generally with respect to the maintenance, control and management of the ports and the approaches thereto, the services performed, the lighthouses, communication, navigation and other facilities provided by the Authority, and for the maintenance of order in any ship or aircraft, or on any premises used by or for the purposes of the Authority, or in any ship, aircraft or vehicle used by or for the purposes of the Authority, and for the carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations with respect to—

- (a) the proper control and management of the foreshores of any port and the entrances thereof, the prevention and removal of obstructions therein and the regulation of any work, service or facility performed or provided thereat;
- (b) the control of persons and vehicles on any such premises, the maintenance of order thereon and the admission or exclusion of persons therefrom and the charges, if any, to be made for such admission;
- (c) regulating, controlling and prohibiting the doing or omission of any thing or class of things within the limits of any port or any specified part or parts of any port either at all times and on all occasions or at any time or times or on any occasion or occasions;
- (d) the regulation, restriction and control (without prejudice to the conduct of navigation) of the depositing of any substance, solid matter, article or thing polluting or likely to cause pollution of the waters of any port;
- (e) the regulation of traffic and navigation of ships and aircraft within the limits and approaches to a port and all matters relating to the protection of life and property;
- (f) the regulation of the mode and place of mooring, anchoring, and berthing of ships and the parking of aircraft and their removal from a mooring, anchorage, berth or position and the time within which such removal shall be effected;
- (g) the protection of ships and aircraft and their cargoes, and the removal, destruction, sale or abandonment of stranded ships, aircraft and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway or runway of any port, the payment of expenses including salvage incurred in connection therewith and the levy and recovery of a charge for the right of a hulk or wreck or wreckage to lie in any port;
- (h) the examination, licensing, duties and obligations, the conduct and discipline of Authority pilots and the charges to be paid for pilotage;

- (i) the regulating of the times, places, order and mode of shipping, unshipping, loading, unloading, warehousing, storing and the depositing of goods;
- (j) the fixing of dues and charges payable in respect of any ship or aircraft with different charges being applicable in respect of different ships or aircraft or classes of ships or aircraft, the exemption or the remission thereof or part thereof;
- (k) the fixing of the dues and charges payable in connection with the carriage or warehousing of goods and for any service performed or any facility provided by the Authority, the exemption from payment, refund or remission thereof;
- (l) the fixing of the scale of charges payable in respect of any other service performed or facility provided by the Authority;
- (m) the licensing of shipping agents, customs brokers, landing agents, forwarding agents, baggage and parcel agents, porters, contractors for supplies and victualling and other persons concerned in or engaged in or performing any service or work in connection with the port; and
- (n) anything required to be prescribed by this Act and any matter in respect of which it may be expedient to make regulations to give effect to the purposes of this Act.

(2) The Authority may, with the approval of the Minister, make regulations generally for the conveyance, loading, discharging and storage of dangerous goods within the limits of the port, and without prejudice to the generality of the foregoing, may make regulations with respect to—

- (a) the classification of goods as dangerous goods;
- (b) the regulation of the navigation and place of berthing of ships and parking of aircraft carrying dangerous goods;
- (c) the regulating and control of landing, loading and discharging dangerous goods;
- (d) the prohibition or subjection to conditions and restrictions of the conveyance of any kind of dangerous goods with any other kind of goods;
- (e) the prohibition of the loading or discharging of dangerous goods at places within the control of the Authority in cases where such loading or discharging appears dangerous to the public;
- (f) the fixing of places and times at which dangerous goods are to be loaded and the quantity to be loaded or discharged at any one time;
- (g) the regulation of the mode and the precautions to be observed in conveying or keeping dangerous goods and in the loading or discharging of the same;
- (h) the protection generally, of persons and property from danger.

(3) Subject to the provisions of any enactment relating to merchant shipping or air navigation, the Authority may, with the approval of the Minister, make regulations with respect to—

- (a) the taking of measures for the prevention of ships or aircraft from leaving any port if over-loaded, improperly loaded, found

insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety; or if otherwise not seaworthy or airworthy, as the case may be;

- (b) the examination, certification and licensing of masters, mates and engineers of ships and of tugs conducting ships in and out of ports, dredges and light craft and pilots of aircraft and the licence fees payable in respect thereof;
- (c) the inspection, licensing, registration or certification of ships, ferries, tugs, launches, bulks, ferryboats, aircraft or other craft, the charges to be paid therefor and the number of passengers to be carried therein.

(4) The power of the Authority to make regulations under this section in relation to any matter, shall not be construed to be in conflict with or as derogating from any other powers conferred upon it under this Act or any regulation to make provisions in relation to any such matter in any different manner.

(5) Regulations made under this section in relation to the use of a roadway in any port, shall take effect notwithstanding that such roadway may be a road which is subject to the provisions of the Vehicles and Road Traffic Act, Cap. 15.06 and regulations thereunder.

(6) Regulations made under this section may provide that any breach or contravention of any such regulations shall be punishable on summary conviction by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment and in the case of a continuing breach or contravention a fine not exceeding fifty dollars a day for every day after the first during which the breach or contravention continues, or a term of imprisonment with or without hard labour not exceeding six months or both such fine and such term of imprisonment.

PART IX

PROVISIONS RELATING TO OFFENCES

Damaging property likely to endanger life.

66. Any person who unlawfully damages or in any way interferes with any lighthouse, buoy, beacon, ground light or other property of the Authority in such manner as to endanger, or as might endanger the life of any person, commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding ten years.

Persons endangering safety of operations.

67. Any person who, whether on duty or lawfully employed or not, on any premises of the Authority or upon any ship, aircraft or vehicle in any port, endangers the safety of any other person by—

- (a) contravening any of the provisions of this Act or of any regulations; or
- (b) contravening any lawful order or direction given to such person; or
- (c) being under the influence of alcohol or drugs; or
- (d) any rash or negligent act,

commits an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Failure to comply with directions under section 58, etc.

68. Any person who, without lawful excuse refuses or neglects to obey any direction lawfully given under section 58 or under any regulation made under Part VI of this Act commits an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Failure to give information or giving false information.

69. Any person in charge of a ship or an aircraft who fails to comply with the provisions of section 57 or gives any information which is false in any material particular, commits an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or in default of payment thereof to imprisonment for a term not exceeding three months.

Refusing entry to authorised officer.

70. Any person in charge of a ship or an aircraft who without lawful excuse refuses to allow entry to his or her ship or aircraft in contravention of section 59(1)(c), commits an offence and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars or in default of payment thereof to imprisonment for a term not exceeding three months.

False returns.

71. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document, which is required or authorised to be made under this Act or any regulations, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Evasion of dues and charges.

72. Any person, who by any means whatsoever eludes or evades any dues or charges leviable under this Act or any regulations hereunder commits an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Demanding improper account.

73. Any person who, with intent to defraud, demands or receives from any person delivering goods for carriage or warehousing by the Authority, or from any other person making use of the facilities provided by the Authority, any greater or lesser amount than he or she should demand or receive commits an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Miscellaneous offences.**74.** Any person who—

- (a) being on any premises of the Authority or on any ship, aircraft or vehicle in a port—
 - (i) refuses when called upon by an authorised officer, police officer or constable to give his or her name and address, or gives a false name and address for the purpose of avoiding prosecution;
 - (ii) without lawful excuse the proof whereof shall lie on him or her, discharges any firearm or does anything which may cause injury to any person on such premises, or upon such ship, aircraft or vehicle;
 - (iii) without lawful excuse contravenes any lawful direction given by any authorised officer; or
- (b) defaces the writing on any board or notice authorised by or on behalf of the Authority to be maintained upon any premises of the Authority or upon any ship, aircraft or vehicle in a port;
- (c) damages or without lawful excuse interferes with any property of the Authority;
- (d) wilfully obstructs or impedes any other person in the discharge of his or her duties arising out of his or her employment with the Authority; or
- (e) gives or offers to any other person, money or money's worth for the purpose of avoiding payment of any sum due to the Authority,

commits an offence and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or both such fine and imprisonment.

Powers of arrest.

75. (1) Any person who commits any offence mentioned in section 66, 67 or 74 may be arrested without warrant by any authorised officer, police officer or constable.

(2) Any person who commits any offence against this Act or regulations other than an offence mentioned in subsection (1) may be arrested by an authorised officer or police officer if—

- (a) there is reason to believe that such person will abscond; or
- (b) he or she refuses on demand to give his or her name and address; or
- (c) there is reason to believe that the name or address given by him or her is incorrect:

Provided that, where there is reason to believe that such person will not abscond, he or she shall, if his or her true name and address are ascertained, be released on his or her executing a bond for his or her appearance before a Magistrate when required.

Place of trial.

76. Any person charged with any offence against this Act other than on offence mentioned in section 66 or 71, may be proceeded against, tried and punished in any place in which he or she may be in custody for that offence as if the offence had been committed in such place; and the offence shall for the purposes incidental to, or consequent upon, the prosecution, trial or punishment thereof, be deemed to be committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

General Manager may confer power on officers.

77. The General Manager may, by notice in writing authorise any officer of the Authority to maintain order upon any premises used by the Authority or in any place in the port, or on any ship, aircraft or vehicle in a port, and any officer so authorised shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

PART X

LEGAL PROVISIONS

Notice claims.

78. (1) Notwithstanding anything contained in any enactment—

- (a) no person shall be entitled to compensation or damages for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment accepted by the Authority for carriage or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary is given to the General Manager within six months of the date upon which such goods were accepted by the Authority; and
- (b) no person shall be entitled to compensation or damages for any goods missing from a packed or unpacked consignment or for misdelivery of, damage or delay to, or detention of any goods accepted by the Authority for carriage or warehousing unless—
 - (i) the General Manager through the Port Manager of the Port at which the goods entered is notified of such fact in writing within four days of the date on which such goods were delivered to the consignee or person entitled to take delivery thereof; and
 - (ii) a claim in writing, giving such particulars as may reasonably be necessary, is given to the General Manager through the Port Manager of that port within one month of such date.

(2) Where the person claiming compensation or damages proves that it was impracticable for him or her to notify the General Manager or to give the General Manager his or her claim as set out in subsection (1) within the times specified therein and that such notification or claim was made or given in a reasonable time, nothing in that subsection shall prejudice the right of such person to obtain compensation or damages.

Limitation.

79. Where, after the commencement of this Act, any action or other legal proceedings is commenced against the Authority for any act done in pursuance or execution or intended execution of this Act or the regulations or of any public duty or authority imposed or conferred by this Act or any regulations, or in respect of any alleged neglect or default in the execution of this Act or the regulations, or of any such duty or authority, the following provisions shall have effect notwithstanding anything contained in any enactment, that is to say—

- (a) the action or legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the General Manager by the plaintiff or his or her agent;
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default or damage complained of, or in the case of a continuing injury or damage within six months next after the cessation thereof.

Limitation on execution against property of the Authority.

80. Notwithstanding anything to the contrary in this Act, any regulations or in any other enactment—

- (a) where any judgment or order has been obtained against the Authority, no execution or attachment, or process in the nature thereof, shall be issued against the Authority or against any property of the Authority; but the General Manager shall, without delay, cause to be paid out of the funds of the Authority such amounts as may by the judgment or order, be awarded against the Authority to the person entitled thereto;
- (b) no property of the Authority shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the General Manager.

Overpayment or underpayment of charges.

81. (1) Where the amount paid in respect of any dues and charges is found to be incorrect, then, if such amount is—

- (a) overpaid, the person who overpaid any such amount shall be entitled to a refund of the amount so overpaid;
- (b) underpaid, the amount of such underpayment may be collected from the person who made such payment.

(2) Notwithstanding anything contained in any enactment, such overpayment or underpayment shall not be refunded, or collected, as the case may be, unless notice in writing containing such particulars as may be reasonably necessary is given—

- (a) by the person claiming such overpayment to the General Manager through the Port Manager of the port at which the payment was made; or
- (b) by the General Manager to the person against whom the underpayment is claimed,

within six months after the goods were accepted or the services rendered, as the case may be by the Authority, so, however, that where such underpayment is caused by

information or description subsequently found to be incorrect, such period of six months shall commence from the date of the discovery by the General Manager of the correct information or description.

(3) Where the person claiming a refund under subsection (2) proves, to the satisfaction of the General Manager that it was impracticable for him or her to notify the General Manager of his or her claim within the time specified in that subsection, and that such notification was made, or given, in reasonable time, nothing in that subsection shall prejudice the right of such person to obtain such refund.

PART XI

MISCELLANEOUS PROVISIONS

Transfer of assets.

82. (1) Upon the commencement of this Act, all lands, buildings, warehouses, machinery, plants, tools and other property at the Newcastle Airport and Charlestown Seaport which immediately before the commencement of this Act were the property of the Administration are hereby transferred to and vested in the Authority.

(2) All rights, privileges and advantages and all the obligations to which, immediately before the commencement of this Act the Administration was entitled or subject to, as the case may be, in respect of its responsibility for the Newcastle airport and Charlestown seaport are hereby transferred to and conferred or imposed on the Authority for the purposes of this Act.

(3) A reference in any deed, contract, bond or security or other document subsisting immediately before the commencement of this Act, against or in favour of the Administration in relation to the Newcastle airport and Charlestown seaport shall have full force and effect against or in favour of the Authority and be enforceable as fully and effectually as if, instead of the Administration or any person acting on behalf thereof, the Authority had been named therein and had been a party thereto.

Land vested in Authority to be free from rates and taxes.

83. All lands vested in the Authority at and after the commencement of this Act shall be exempt from any rate, tax, or imposition but nothing herein contained shall preclude rates, taxes and other lawful charges in respect of lands, houses and buildings of the Authority leased and occupied for private purposes.

Exemption from taxes.

84. Notwithstanding anything contained in any other law the Authority shall not be liable to payment of any import duty, stamp duty, income tax or any other duty or tax whatsoever.

Authority may appoint constables.

85. (1) The Authority may, subject to Standing Orders made by the Authority and approved by the Minister, appoint persons to be constables.

(2) The constables so appointed shall be a supplemental body of police styled "Port Constabulary".

(3) Such Standing Orders shall provide for the terms and conditions of appointment, with provision for the duties of a constable with special regard to the

maintenance of order within the port and the protection and safety of goods and property, and the suspension and termination of appointment of any person appointed as a constable under this section.

(4) The Commissioner of Police shall have the general command and superintendence of the Port Constabulary.

(5) Every member of the Port Constabulary shall in the performance of his or her duties have and exercise all the powers, rights, privileges and protection and be liable to the same responsibilities and discipline of a police officer.

Power to shoot animals found trespassing.

86. Notwithstanding anything to the contrary in any other law, it shall be lawful for any police officer or port constable or any other person authorised in writing by the General Manager or a Port Manager to destroy by shooting any animal found trespassing on any port.

Suspected persons.

87. (1) Where a person is suspected of contravening or of being about to contravene this Act or any regulation under this Act, a police officer, port constable or any person authorised in writing by the General Manager or by a Port Manager may request that person to state his or her name and address and the purpose for which he or she is at the port.

(2) A person who fails to state his or her name and address and purpose for being at the port upon being requested to do so by any person acting under subsection (1), may be removed from the port or from any part of the port by a police officer, port constable or person authorised by the General Manager.

Removal of persons and things.

88. (1) Any person who is found contravening this Act or any regulation hereunder, or any vehicle, animal or thing found in the area of a port in contravention of this Act or any regulation may be removed from the area by a police officer, port constable, or person authorised in that behalf by the General Manager.

(2) Where a person is convicted before a Magistrate of the contravention for which he or she was removed under subsection (1), the owner or the person in charge of the vehicle, animal or thing, may, in addition to any other penalty, be ordered by the Magistrate to pay the cost of the removal.

Bonding warehouse.

89. (1) If any warehouse of the Authority is licensed as a bonding warehouse, the Authority may, notwithstanding anything contained in any enactment, give general security by bond or otherwise for the payment of the customs duties payable in respect of goods stored in such bonding warehouse or for the due exportation of such goods.

(2) When such security has been given by the Authority, no further security shall be required by the Comptroller of Customs from any other person to the same effect.

(3) Nothing in this section shall be taken however to absolve any person who would have been liable to pay duties from paying any such duty as he or she would be compelled to pay in respect of any such goods.

Proceedings for offences.

90. Proceedings for offences arising out of the provisions of this Act shall be instituted in writing by the Port Manager of the port or by any officer duly authorised by him or her in writing.

Proof.

91. In any proceedings for any offence, the averment that such offence was committed within the limits of the port shall be sufficient without proof of such limits, unless the contrary is proved.

Recovery of sums.

92. In addition to any other remedy given under this Act, all dues, charges, compensation, damages, costs, expenses or other sums due to the Authority under the provisions of this Act may be recovered by the Authority as a civil debt.

Moneys recovered to be paid into account of the Authority.

93. All fines, compensation, damages, costs or other sums directed to be paid in respect of any offence, proceeding or matter arising out of the performance of the duties, powers and functions of this Act or any regulations shall be paid into the account of the Authority.
