

CHAPTER 52

EXCISE

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE IMPORT, EXPORT, TRANSPORT, MANUFACTURE, SALE, AND POSSESSION OF INTOXICATING LIQUOR AND OF INTOXICATING DRUGS.

[1st January, 1913.]

CHAPTER I

PRELIMINARY

1. This Ordinance may be cited as the Excise Ordinance.

2. In this Ordinance, unless there be something repugnant in the subject or context—

“beer” includes ale, stout, porter, and all other fermented liquors made from malt ;

“country liquor” means any liquor manufactured in Ceylon on which duty of excise has not been levied or is not leviabie at the full rate of duty chargeable on like liquor imported into Ceylon from foreign countries ;

“denatured” means effectually and permanently rendered unfit for human consumption ;

“excisable article” means and includes any liquor as defined by this Ordinance ;

“Excise Commissioner” means the officer who has the control of the administration of the Excise Department and of the collection of the excise revenue ;^a

“excise officer” means a Government Agent, Assistant Government Agent, or any officer or other person appointed or invested with powers under section 8 ;

“excise revenue” means revenue derived or derivable from any duty, fee, tax, fine (other than

Ordinances

Nos. 8 of 1912,
25 of 1914,
17 of 1929,
4 of 1931,
3 of 1933,
4 of 1936,
25 of 1938,
27 of 1943,

Acts

Nos. 41 of 1954,
22 of 1955,
9 of 1956,
49 of 1961
36 of 1957

Short title.

Interpretation.

[§ 2, 25 of 1938.]

a fine imposed by a court of law), or confiscation imposed or ordered under the provisions of this Ordinance or of any other law for the time being in force relating to liquor ;

“ export ” means to take out of Ceylon to sea or to foreign territory ;

“ foreign liquor ” includes all liquor other than country liquor :

Provided that, in any case in which doubt may arise, the Minister¹ may by notification declare, whether for the purposes of this Ordinance or any rules made thereunder, any particular liquor shall be deemed to be “ country liquor ” or “ foreign liquor ” ;

“ import ” means to bring into Ceylon from sea or from any place beyond the limits of Ceylon ;

“ liquor ” includes spirits of wine, spirit, wine, toddy, beer, and all liquid consisting of or containing alcohol ; also any substance which the Minister¹ may by notification declare to be liquor for the purposes of this Ordinance ;

“ manufacture ” includes every process, whether natural or artificial, by which any excisable article is produced or prepared, and also re-distillation, and every process for the rectification, flavouring, blending, or colouring of liquor ;

“ place ” includes a house, building, shop, tent, boat, or other vessel ;

“ sale ” or “ selling ” includes any transfer otherwise than by way of gift ;

“ spirit ” means any liquor containing alcohol obtained by distillation, whether it is denatured or not ;

to “ bottle ” means to transfer liquor from a cask or other receptacle to a bottle or other receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes re-bottling ;

to “ tap ” includes every part of any process by which the spathe or flower of any toddy-producing tree is prepared for the drawing of toddy ;

“toddy” means fermented or unfermented juice drawn from any coconut, palmyra, kitul, or other kind of palm tree ;

“transport” means to move from one place to another within Ceylon.

3. The Minister¹ may by notification either wholly or partially exempt any excisable article from all or any of the provisions of this Ordinance, either throughout Ceylon or in any specified area, or for any specified period or occasion, or as regards any specified class of persons, and may attach such conditions as he thinks fit to such exemption.

Power of Minister to exempt excisable articles from the provisions of this Ordinance.

4. The Minister¹ may by notification declare, with respect either to the whole of Ceylon or to any local area, and as regards purchasers generally or any specified class of purchasers, and generally or for any specified occasion, what quantity of any excisable article shall, for the purposes of this Ordinance, be the limit of sale by retail and sale by wholesale respectively.

Limits of sale.

5. Nothing contained in this Ordinance shall apply to any canteen, shop, or tavern opened or kept under military or naval regulations, and subject to the supervision of military or naval officers.

Saving of military and naval canteens.

CHAPTER II

ESTABLISHMENT AND CONTROL

6. Except as otherwise provided by this Ordinance, the collection of the excise revenue shall be under the charge of the Government Agent.

The collection of the excise revenue to lie with the Government Agent.

7.* There shall be appointed—

- (a) an Excise Commissioner who shall, subject to the general direction and control of the Minister, have the control of the administration of the Excise Department and of the collection of excise revenue, and
- (b) such officers of the Excise Department as may be necessary to give effect to the provisions of this Ordinance.

Appointment of Excise Commissioner and other officers of Excise Department.

reserves all or any of the powers and has from all or any etc. etc. 49/1964

Powers of Minister.

8. The Minister¹ may by notification applicable to the whole of Ceylon or to any district or local area in which this Ordinance is in force—

May appoint persons other than the Government Agent to exercise all or any of his powers.

(a) appoint any person other than the Government Agent to exercise all or any of the powers and to perform all or any of the duties of a Government Agent in respect of the excise revenue, either concurrently with or in exclusion of the Government Agent, subject to such control as the Minister¹ may direct ;

May appoint officers to take action under sections 33, 35, and 48(a), and other officers.

(b) appoint officers or persons to perform the acts and duties mentioned in sections 33, 35, and 48 (a) ;

(c)¹ set out the designations, powers and duties of officers of the Excise Department under the Ordinance ;

May appoint any Government officer or other person to act as above.

(d) order that all or any of the powers and duties assigned to any officer under paragraphs (b) and (c) of this section shall be exercised and performed by any Government officer or any person ;

May delegate any of his powers to any excise officer.

(e) delegate to any excise officer in whole or in part all or any of his powers under the following sections of this Ordinance :—sections 8 (c), 12, 14, 19, 20, 24, 25 ;

May withdraw powers.

(f) withdraw from any officer or person any or all of the powers conferred or imposed upon him by or under this Ordinance ;

And may permit delegation of powers.

(g) permit the delegation by the Excise Commissioner or by Government Agents of any powers conferred by this Ordinance, or exercised in respect of excise revenue under any enactment for the time being in force.

Orders of Excise Commissioner or Government Agents appealable to Minister.

9. (1) All orders passed by the Excise Commissioner or by a Government Agent under this Ordinance shall be appealable to the Minister¹ in the manner provided by the rules made under section 32 (2) (c).

(2) On any such appeal the Minister¹ may make such orders as the circumstances may require.

CHAPTER III

IMPORT, EXPORT, AND TRANSPORT

10. No excisable article which is liable to the payment of duty under this Ordinance or under the Customs Ordinance, or any other law for the time being in force relating to the duties of customs on goods imported into Ceylon, shall be imported, unless the duty prescribed by such law has been paid, or a bond executed for the payment of such duty.

Import of excisable articles.

11. No excisable article which has been manufactured in Ceylon shall be exported, unless the duty, if any, leviable under this Ordinance or under the Customs Ordinance, has been paid, or a bond executed for the payment of such duty.

Export of excisable articles.

12. The Minister¹ may by notification prohibit the import or export of any excisable article, and may permit the import or export of any excisable article subject to such conditions and to the payment of such duty as he may think fit, and may prohibit the transport of any excisable article from any local area into any other local area.

Prohibition of import, export, and transport of excisable articles.

13. No excisable article exceeding such quantity as the Minister¹ may prescribe by notification, either generally for the whole of Ceylon or for any local area, shall be imported, exported, or transported, except under a pass issued under the provisions of the next following section :

Pass required for import, export, and transport of excisable articles.

Provided that in the case of duty paid foreign liquor other than denatured spirit, such passes shall not be necessary, unless the Minister¹ shall by notification otherwise direct with respect to any local area.

14. (1) Passes for the import, export, or transport of excisable articles may be granted by the Government Agent. Such passes may be either general for definite periods and kinds of excisable articles, or special for specified occasions and particular consignments only.

Passes for import, export, or transport.

(2) Passes granted under this section shall be in such form, and shall contain such particulars, and be granted to such persons as the Minister¹ may by notification prescribe.

CHAPTER IV

MANUFACTURE, POSSESSION, AND SALE

Manufacture of excisable articles prohibited except under provisions of this Ordinance.

[§ 3, 25 of 1938.]

Establishment of distilleries, breweries, and warehouses.

15. Except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Government Agent, or under the provisions of section 20—

- (a) no excisable article shall be manufactured ;
- (b) no toddy-producing tree shall be tapped ;
- (c) no toddy shall be drawn from any tree ;
- (d) no distillery, brewery, or warehouse shall be established or worked ;
- (e) no person shall use, keep, or have in his possession any materials, still, utensils, implement, or apparatus whatsoever for the purpose of manufacturing any excisable article other than toddy ;
- (f) no liquor shall be bottled for sale.

16. (1) The Excise Commissioner may—

- (a) establish or authorize the establishment of distilleries and breweries in which liquor may be manufactured under a licence granted under section 15 on such conditions as the Minister¹ deems fit to impose ;
- (b) establish or authorize the establishment of warehouses wherein any excisable article may be deposited and kept without payment of duty ; and
- (c) subject to the provisions of sections 27 and 28 discontinue any distillery, brewery, or warehouse.

(2) No distillery, brewery, or warehouse as aforesaid shall be established or worked except by, or under the authority of, the Excise Commissioner.

17. No person not being a licensed manufacturer or vendor of any excisable article shall have in his possession any quantity of any excisable article in excess of such quantity as the Minister¹ under section 4 may declare to be the limit of sale by retail, unless under a permit granted by the Government Agent in that behalf :

Possession of excisable articles in excess of the quantity prescribed by Government prohibited.

Provided that—

- (i) no fee shall be charged for any such permit granted for the possession of such excisable article for bona fide private consumption or use ;
- (ii) nothing in this section extends to any foreign liquor other than denatured spirit in the possession of any common carrier or warehouseman as such, or purchased by any person for his bona fide private consumption and not for sale ;
- (iii) the Minister¹ may by notification prohibit the supply to, or possession by, any person or class of persons, either throughout the whole of Ceylon or in any local area, of any excisable article, either absolutely or subject to such conditions as he may prescribe.

No fee to be charged for permit for possession for private consumption.

Section not to apply to foreign liquor other than denatured spirit.

Prohibition of possession in certain cases.

18. No excisable article shall be sold, or kept or exposed for sale, without a licence from the Government Agent :

Sale of excisable articles without licence prohibited.
[§ 4, 25 of 1938.]

Provided that—

- (a) a person having the right to the toddy drawn from any tree may sell the same without a licence to a person licensed to manufacture and sell toddy under this Ordinance or to a person licensed under this Ordinance to manufacture arrack or vinegar from toddy ;

- (b) a licence for sale in more than one administrative district shall be granted by the Excise Commissioner ;
- (c) nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by him or by auction on his behalf, or on behalf of his representatives in interest upon his quitting a station or after his decease.

Exclusive privileges of manufacture, &c., may be granted.

19. (1) The Excise Commissioner may with the approval of the Minister¹ grant to any person on such conditions and for such period as he may deem fit the exclusive privilege—

- (a) of manufacturing, or of supplying by wholesale, or of both ; or
- (b) of selling by wholesale or by retail ; or
- (c) of manufacturing, or of supplying by wholesale, or of both, and of selling by retail,

any country liquor within any local area ; or

- (d) of selling any foreign liquor by retail in a tavern within any local area under a tavern licence prescribed by rule made under section 32 or by direction of the Minister¹ issued under section 25.

(2) No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from the Government Agent.

Grantee of toddy privileges may grant licence.

20. When any exclusive privilege of manufacturing and selling toddy has been granted under section 19, the Minister¹ may declare that the written permission of the grantee to draw toddy shall have the same force and effect as a licence from the Government Agent for that purpose under section 15.

Grantee may let or assign.

21. Subject to any conditions imposed by section 19, and subject to the approval of the Government Agent, any grantee of any exclusive privilege may let or assign the whole or any portion of his privilege ; but no lessee

or assignee of such privilege shall exercise any rights as such unless and until the grantee shall have applied to the Government Agent for a licence to be given to such lessee or assignee, and such lessee or assignee shall have received the same.

CHAPTER V

DUTIES ON EXCISABLE ARTICLES

22. (1) The ~~House of Representatives~~^{Minister with the concurrence of the M/F may by order published in the Govt. Gazette} may, by resolution, from time to time impose a duty at such rate or rates, either generally or for any specified local area, on any excisable article—

Duties may be imposed by resolution of the House of Representatives. ^{49/1961}
~~the Ministers~~^{the Minister} by order published in the Gazette

- (a) permitted to be imported or exported in accordance with the provisions of section 11 or section 12; or
- (b) permitted to be transported; or
- (c) manufactured under any licence granted in respect of paragraphs (a), (b), (c), and (d) of section 15; or
- (d) manufactured in any distillery or brewery, established under section 16.

Explanation.—Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption.

(2) The power conferred by subsection (1) to impose by a ~~resolution~~^{order published in the Gazette} a duty on any excisable article referred to therein shall include the power—

[§ 2, 27 of 1943.]

- (a) by the same or a subsequent ~~resolution~~^{order} to grant any exemption from the duty and to specify the circumstances in which, and the conditions subject to which, the exemption is granted;
- (b) by a subsequent ~~resolution~~^{order} to amend any earlier resolution so as to increase or reduce the duty or vary the description of the article or the scope of any exemption granted to any class or description of the article or include within or exclude from the scope of the earlier ~~resolution~~^{order} any class or description of such article; and

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(c) by a subsequent ^{order} resolution to rescind any earlier resolution so as to abolish any duty or withdraw any exemption.

(3) & (4) New Sub. Sects.

How duty
may be
levied.

23. Subject to such rules regulating the time, place, and manner of payment as the Minister¹ may prescribe, such duty may be levied in one or more of the following ways:—

(a) with reference to paragraph (a) of section 22 (1)—

(i) by payment of duty either at the place of import or at the place of export, or

(ii) by payment upon issue for sale from a warehouse established under section 16 (1) (b) or licensed under section 15 (d);

(b) with reference to paragraph (b) of section 22 (1)—

(i) by payment in the district from which the excisable article is to be transported, or

(ii) by payment upon issue for sale from a warehouse established under section 16 (1) (b) or licensed under section 15 (d);

(c) with reference to paragraphs (c) and (d) of section 22 (1)—

by duty to be charged in the case of spirit or beer, either—

(i) on the quantity produced in, or issued from, the distillery or brewery, as the case may be, or issued from a warehouse established under section 16 (1) (b) or licensed under section 15 (d), or

(ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the Minister¹ may prescribe;

- (d) generally by such other methods of taxation as the House of Representatives¹ may, by resolution, from time to time appoint.

24. Instead of, or in addition to any duty leviable under this Part, the Excise Commissioner¹ may accept payment of a sum in consideration of the grant of any exclusive privilege under section 19.

Payment for exclusive privileges.

CHAPTER VI

LICENCES, &c.

25. Every licence, permit, or pass granted under this Ordinance shall be granted—

Form and conditions of licences, &c.

- (a) on payment of such fees, if any ;
- (b) for such period ;
- (c) subject to such restrictions and on such conditions ; and
- (d) shall be in such form and contain such particulars as the Minister¹ may direct either generally or in any particular instance in this behalf.

26. Every person taking out a licence under this Ordinance may be required to execute a counterpart agreement in conformity with the tenor of his licence, and to give such security for the performance of his agreement as the authority granting the licence may require.

Counterpart agreement to be executed by licensee.

27. (1) Subject to such restrictions as the Minister¹ may prescribe, the authority granting any licence, permit, or pass under this Ordinance may cancel or suspend it—

Power to cancel or suspend licences, &c.

- (a) if any duty or fee payable by the holder thereof be not duly paid ; or
- (b) in the event of any breach by the holder of such licence, permit, or pass, or by his servants, or by anyone acting with his express or implied permission on his behalf of any of the terms or conditions of such licence, permit, or pass ;
or

- (c) if the holder thereof is convicted of any offence under this Ordinance, or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence under the Merchandise Marks Ordinance, or is punished for any offence referred to in section 129 of the Customs Ordinance; or
- (d) where a licence, permit, or pass has been granted on the application of the holder of an exclusive privilege under this Ordinance on the requisition in writing of such person.

(2) When a licence, permit, or pass held by any person is cancelled under paragraph (a) or paragraph (b) of subsection (1), the authority aforesaid may cancel any other licence, permit, or pass granted to such person under this Ordinance or under any other law for the time being in force relating to excise revenue.

(3) The holder shall be entitled to no compensation for the cancellation or suspension of his licence, permit, or pass under this section, nor to refund of any fee paid or deposit made in respect thereof.

Further
power to
cancel
licences.

28. (1) Whenever the authority stated in section 27 considers that a licence should be cancelled for any cause other than those specified in that section, he shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may cancel the licence either—

- (a) on the expiration of fifteen days' notice in writing of his intention to do so; or
- (b) forthwith without notice.

(2) If any licence be cancelled under this section, the aforesaid authority may, in addition to remitting such sum aforesaid pay to the licensee such further sum by way of compensation as the Excise Commissioner may direct.

(3) When a licence is cancelled under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount, if any, due to Government.

29. Any holder of a licence to sell under this Ordinance may surrender his licence on the expiration of one month's notice in writing given by him to the Government Agent of his intention to surrender the same, and on payment of the fee payable for the licence for the whole period for which it would have been current but for such surrender :

Surrender of licence.

Provided that if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a licence, he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

CHAPTER VII

GENERAL PROVISIONS

30. (1) Every person who manufactures or sells any excisable article under a licence granted under this Ordinance shall be bound—

Certain licensees required to keep instruments for testing, &c.

- (a) to supply himself with such measures, weights, and instruments as the Minister¹ may prescribe, and to keep the same in good condition ; and
- (b) when such measures, weights, and instruments have been prescribed, on the requisition of any excise officer duly empowered in that behalf, at any time to measure, weigh, or test any excisable article in his possession in such manner as the said excise officer may require.

(2) The Minister¹ may, under this section, prescribe measures, weights, and instruments, in addition to or other than those provided for by the Weights and Measures Ordinance.

31. (1) In case of default made by a holder of a licence or by a grantee of an exclusive privilege in the payment of any duty or fee, or in the performance of all or any of the terms or conditions of such licence or grant, the Government Agent may, if he thinks fit, without process of law, after fifteen days' notice in writing to the licensee or grantee of his intention to do so, take the licence or grant under management at

Procedure in case of default by licensee or grantee of exclusive privilege.

the risk of the defaulter, or may declare the licence or grant forfeited, and re-issue or re-sell it at the risk and loss of the defaulter.

(2) When a licence or grant is under management under this section, the Government Agent may recover as excise revenue any moneys due to the defaulter by any lessee or assignee.

Power to
make rules.

32. (1) The Minister¹ may make rules for the purpose of carrying out the provisions of this Ordinance or other law for the time being in force relating to excise revenue ; and all such rules shall be laid as soon as conveniently may be before the Senate and the House of Representatives,¹ and upon being confirmed, with or without modification, by a resolution of the Senate and the House of Representatives,¹ and upon such confirmation being notified in the Gazette, shall have the force of law from the date of such notification, or upon such date as may be therein fixed :

Provided that in any case of urgency the Minister¹ may by notification declare any such rules to be in force from a date named therein, and such rules shall thereupon come in force on such date ; but if within forty days of the date upon which such rules are laid before the Senate and the House of Representatives¹ a resolution be passed by either House¹ praying that all or any of such rules be modified or annulled, such rules or rule shall thenceforth be modified or annulled accordingly, but without prejudice to anything done thereunder.

(2) In particular, and without prejudice to the generality of the foregoing provision, the Minister¹ may make rules—

- (a) regulating the delegation of any powers by the Excise Commissioner or by Government Agents under section 8 (g) ;
- (b) prescribing the powers and duties of officers of the Excise Department ;
- (c) prescribing the procedure in appeals from orders of the Excise Commissioner or the Government Agents to the Minister ;¹
- (d) regulating the import, export, or transport of any excisable article ;

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- (e) regulating the manufacture, bottling, supply, or storage of any excisable article, including—
- (i) the erection, inspection, supervision, management, and control of any place for the manufacture, bottling, supply, or storage of such article, and the fittings, implements, and apparatus to be maintained therein,
 - (ii) the tapping of toddy-producing trees and the drawing of toddy from such trees ;
- (f) regulating the deposit of any excisable article in a warehouse, and the removal therefrom, of such article ;
- (g) regulating the periods and localities for which licences for the wholesale or retail sale of any excisable article may be granted ;
- (h) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted for any locality ;
- (i) prescribing in the case of any excisable article the way in which the duty on such article shall be levied ;
- (j) prescribing the scale of fees, or the manner of fixing the fees, payable in respect of any privilege, licence, permit, or pass or of the storing of any excisable article ;
- (k) regulating the time, place, and manner of payment of any duty or fee ;
- (l) prescribing the restrictions under and the conditions on which any licence, permit, or pass may be granted, including—
- (i) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable,
 - (ii) the fixing of the strength, price, or quantity in excess of or below which any excisable article shall not be sold or supplied, and the quantity in excess of which denatured spirit shall not be possessed, and the prescription of a standard of quality for any excisable article,

- (iii) the prohibition of the employment by the licence holder of any person or class of persons to assist him in his business in any capacity whatsoever,
 - (iv) the prescription of the persons to whom any excisable article may or may not be sold,
 - (v) the prohibition of sale except for cash,
 - (vi) the prevention of drunkenness, gambling, or disorderly conduct in or near any licensed premises, and the meeting of or remaining of persons of bad character in such premises,
 - (vii) the prescription of the days and hours during which any licensed premises may or may not be kept open, and provision for the closure of such premises on special occasions,
 - (viii) the prescription of the nature of the premises in which any excisable article may be sold, and the notices to be exposed at such premises, and
 - (ix) the prescription of the accounts to be maintained and the returns to be submitted by licence holders ;
- (m)
- (i) declaring the process by which spirit manufactured in Ceylon shall be denatured,
 - (ii) for causing such spirit to be denatured through the agency or under the supervision of Government officers,
 - (iii) for ascertaining whether such spirit has been denatured ;
- (n) providing for the destruction or other disposal of any excisable article deemed to be unfit for use ;
- (o) regulating the disposal of confiscated articles ;
- (p) prescribing the instruments to be used in the testing of liquors, and the tables of corrections according to temperature to be used therewith.

CHAPTER VIII

POWERS AND DUTIES OF OFFICERS, &c.

33. The Excise Commissioner or a Government Agent or any excise officer not below such rank as the Minister¹ may prescribe, or any police officer duly empowered in that behalf, may enter and inspect at any time by day or by night any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article; and may enter and inspect at any time during which the same may be open any place in which any excisable article is bottled or kept for sale by any licensed person; and may examine, test, measure, or weigh any materials, still, utensil, implement, apparatus, or excisable article found in such place of manufacture, bottling, or sale.

Power to enter and inspect places of manufacture, bottling, and sale.

34. (1) Within such specified area as the Minister¹ by notification may direct any excise officer not below such rank as the Minister¹ may prescribe shall, within the limits of the area to which he is appointed, and as regards all offences under this Ordinance, exercise the powers that may be exercised in respect of cognizable offences by an inquirer, or by an officer in charge of a police station, under the provisions of Chapter XII of the Criminal Procedure Code.

Powers of excise officers in matters of arrest and inquiry.

(2) An inquiry under this section shall be held at or in the neighbourhood of the place in which the offence is alleged to have been committed.

35. (1) Any officer of the Excise, Police, Customs, or Revenue Departments, not below such rank and subject to such restrictions as the Minister¹ may prescribe, and any other person duly empowered, may arrest without warrant any person found committing, in any place other than a dwelling house, an offence punishable under section 46 or section 47; and may seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Ordinance or other law for the time being in force relating to excise revenue; and may search

Cases in which offenders may be arrested, and contraband liquor and articles seized without warrant.

any person upon whom, and any vessel, vehicle, animal, package, receptacle, or covering in or upon which, he may have reasonable cause to suspect any such article to be and, for the purposes of such search, may stop any such person, vessel, vehicle or animal.

(2) The driver of any vehicle or vessel who fails or refuses to stop or to halt such vehicle or vessel when directed to do so either verbally or by signal by an excise officer not below the rank of Inspector wearing his uniform and acting in execution of his duty, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding fifty rupees or in default of payment of such fine to simple imprisonment for a term which may extend to six weeks.

(3) In this section "vehicle" includes any carriage coach, cart, motor car, motor cycle, omnibus, lorry, bicycle, or other mechanically propelled vehicle and the "driver" of a vehicle includes the rider of a motor cycle or of a bicycle; and "signal" includes one or more blasts of a whistle.

Government Agent or Magistrate may issue a search warrant.

36. If a Government Agent or a Magistrate, upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under section 46 or section 47 has been or is likely to be committed, he may issue a warrant for the search for any excisable article, materials, still, utensil, implement, or apparatus in respect of which the alleged offence has been or is likely to be committed, or any paper or document relating thereto; and for the taking into custody and carrying before such an officer as is referred to in section 34 of this Ordinance any person who appears to have been privy to the commission of the offence.

Power of excise officers to search without a warrant.

37. Whenever a Government Agent or any excise officer not below such rank as the Minister¹ may prescribe has reason to believe that an offence under section 46 or section 47 has been, is being, or is likely to be, committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he

may, after recording the grounds of his belief, at any time by day or night, enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Ordinance; and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

38. (1) Where in any Tree Tax Area an authorized officer at any time finds fermented toddy in any pot hanging under a spadix from any tree, he may, if he is satisfied that no licence is in force authorizing the manufacture of fermented toddy from that tree, cut such spadix or cause such spadix to be cut in his presence and under his supervision:

Power to cut
spadices of
trees tapped
without
licence in
Tree Tax
Areas.
[§ 5, 25 of 1938.]

Provided that such spadix shall not be cut, if at that time—

- (a) a tapper is found upon such tree; or
- (b) any person agrees in writing to pay within twenty-four hours the duty or fee, as the case may be, for a licence authorizing the manufacture of fermented toddy from that tree together with the penalty imposed under subsection (4).

(2) Where the officer who at any time finds fermented toddy in the circumstances specified in subsection (1) is an excise inspector, he shall not cut the spadix or cause such spadix to be cut, unless he was at that time accompanied by—

- (a) an officer of the Excise Department whose rank is higher than that of an Excise Inspector; or
- (b) an authorized officer who is an officer of the Revenue Department; or
- (c) the Mayor or Chairman, as the case may be, of the local authority within the limits of which the fermented toddy is found; or
- (d) the member of the local authority for the ward or division, as the case may be, within the limits of which the fermented toddy is found; or

(e) a person (other than an officer in the service of the Government) appointed under paragraph (b) of section 8 ; or

(f) a Justice of the Peace.

(3) Where the officer who at any time finds fermented toddy in the circumstances specified in subsection (1), is an officer of the Revenue Department of a rank below that of Chief Headman or Muhandiram, he shall not cut the spadix or cause such spadix to be cut, unless he was at that time accompanied by—

(a) an officer of the Revenue Department of a rank not below that of Chief Headman or Muhandiram ; or

(b) an authorized officer who is an officer of the Excise Department ; or

(c) any one of the persons specified in paragraphs (c), (d), (e) and (f) of subsection (2).

(4) The Excise Commissioner is hereby empowered to prescribe by notification the penalty required to be paid under paragraph (b) of the proviso to subsection (1) in addition to the duty or fee for the licence referred to in that paragraph :

Provided that the amount of such penalty shall not exceed half the amount of such duty or fee, as the case may be.

(5) The agreement in writing referred to in paragraph (b) of the proviso to subsection (1) shall be free of stamp duty.

(6) No prosecution shall be instituted or maintained against any authorized officer or against any of the persons specified in paragraphs (c), (d), (e) and (f) of subsection (2) in respect of any act bona fide done or ordered to be done by any such officer or person in pursuance or supposed pursuance of the powers conferred by this section.

The provisions of this subsection shall be read and construed as supplemental to the provisions of section 59.

(7) In this section—

“ authorized officer ” means—

- (a) an excise inspector or any other officer of the Excise Department whose rank is higher than that of an Excise Inspector ; or
- (b) a police vidane or any other village headman of rank equal to that of a Police Vidane though otherwise designated, or any other officer of the Revenue Department whose rank is higher than that of such Police Vidane or Village Headman ;

“ local authority ” means any Municipal Council, Urban Council, Town Council, or Village Committee ;

“ Tree Tax Area ” means any area in which the duties for the time being imposed by resolution under section 22, or the fees the payment of which may for the time being be directed by the Minister¹ under section 25, in respect of any licence authorizing the manufacture of fermented toddy from any trees, are to be determined by reference to the number of trees to be tapped under such licence.

39. Every excise officer may release any person arrested under this Ordinance on bail or on such person executing a bond with or without sureties.

Release of arrested persons by excise officers.
[§ 2, 41 of 1954.]

40. The provisions of the Criminal Procedure Code, relating to arrests, searches, search warrants, the release of persons arrested on bail or on the execution of bonds, the production of persons arrested, and the investigation of offences shall be held to be applicable to all action taken in these respects under this Ordinance.

Arrests, searches, &c., how to be made.
[§ 3, 41 of 1954.]

41. All offences under this Ordinance shall be bailable within the meaning of the Criminal Procedure Code, and the provisions of that Code in respect of bail shall be applicable thereto.

Offences to be bailable.

Officers of certain departments bound to report offences and to assist.

42. Every officer of the Police, Customs, and Revenue Departments, and every peace officer, shall be bound to give immediate information to an excise officer of all breaches of any of the provisions of this Ordinance which may come to his knowledge, and to aid any excise officer in carrying out the provisions of this Ordinance upon request made by such officer.

Landholders and others to give information.
[§ 2, 9 of 1956.]

43. (a) All proprietors, tenants, under-tenants, and cultivators who own or hold land on which ;

(b) all persons entitled, under a licence or a permit or any other document whatsoever, to the produce of, or to tap, palm trees on any land on which ; and

(c) all village headmen in whose village—

[§ 6, 25 of 1938.]

there shall be any manufacture of any excisable article not licensed under this Ordinance, shall, in the absence of reasonable excuse, be bound to give notice of the same to a Magistrate or to an officer of the Excise, Police, or Revenue Departments, immediately the same shall have come to their knowledge.

Police to take charge of articles seized.

44. All officers in charge of police stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or of the Government Agent, all articles seized under this Ordinance which may be delivered to them ; and shall allow any excise officer who may accompany such articles to the police station, or may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

Closure of licensed premises.
[§ 7, 25 of 1938.]

45. (1) The Government Agent may, by notice in writing addressed to any person to whom a licence has been issued authorizing the sale of any excisable article at any premises, order such person to close such premises and to refrain from selling or supplying any

excisable article from such premises at such time or for such period as may be specified in the notice—

- (a) if any detachment or any larger unit of soldiers or sailors is passing through or is encamped within the area supplied by such premises ;
- (b) if any riot, unlawful assembly, civil disturbance or breach of the peace exists, occurs or is apprehended within the area supplied by such premises ;
- (c) if a poll for any election, or any local option poll, is to be held within the area supplied by such premises ; or
- (d) if such premises are situated within or in the vicinity of any area for the time being declared to be a diseased locality under the provisions of any written law :

Provided that in any case falling under paragraph (b), the powers conferred on a Government Agent by this subsection may be exercised by a Magistrate, or by a chief headman, or by an officer of the Police Department of a rank not below that of Sub-Inspector.

(2) Every person, to whom a licence has been issued authorizing the sale of any excisable article on any premises, shall close such premises during such time as any riot or civil disturbance occurs within the area supplied by such premises.

(3) Where any person closes any premises in accordance with the provisions of this section, the Excise Commissioner may, in his discretion, direct—

- (a) that such part as the Commissioner may think fit of any amount paid in advance to the Government by such person as fee, tax, duty or rent in respect of such premises, shall be refunded ; or
- (b) that payment of such part as the Commissioner may think fit of any amount due to the Government from such person as fee, tax, duty or rent in respect of such premises, shall be waived.

CHAPTER IX

PENALTIES

Penalties for
illegal import,
&c.

46. Whoever, in contravention of this Ordinance or of any rule or order made under this Ordinance, or of any licence, permit, or pass obtained under this Ordinance—

- (a) imports, exports, transports, or possesses any excisable article ; or
- (b) manufactures any excisable article ; or
- (c) taps any toddy-producing tree ; or
- (d) draws toddy from any tree ; or
- (e) establishes or works any distillery, brewery, or warehouse ; or
- (f) uses, keeps, or has in his possession any materials, still, utensil, implement, or apparatus whatsoever for the purpose of manufacturing any excisable article other than toddy ; or
- (g) sells or keeps or exposes for sale any excisable article ; or
- (h) bottles any liquor for purposes of sale,

shall be guilty of an offence, and be liable on conviction to imprisonment of either description for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both, and where the act hereby penalized is continued after conviction, he shall be liable to the aforesaid punishment for each day on which the offence is so continued.

For illegal
possession.

47. Whoever without lawful authority has in his possession any quantity of any excisable article which has been unlawfully imported, transported, or manufactured, or on which the prescribed duty has not been paid, shall be guilty of an offence, and be liable on conviction to imprisonment of either description for a term which may extend to six months or to fine which may extend to one thousand rupees, or to both.

48. Whoever, being the holder of a licence, permit, or pass granted under this Ordinance, or being in the employ of such holder and acting on his behalf—

For misconduct by licensee, &c.

- (a) fails to produce such licence, permit, or pass on the demand of any excise officer, or of any other officer duly empowered to make such demand ; or
- (b) wilfully contravenes any rule made under section 32 ;
- (c) wilfully does or omits to do anything in breach of any of the conditions of the licence, permit, or pass not otherwise provided for in this Ordinance,

shall be guilty of an offence, and be liable on conviction to imprisonment of either description which may extend to three months, or to fine which may extend to two hundred rupees, or to both ; and, in the case of an offence continued after conviction, to such punishment as aforesaid for each day on which the offence is so continued.

49. (1) Any excise officer who without lawful excuse shall cease or refuse to perform, or shall withdraw himself from, the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner, or unless he shall have given to his superior officer two months' notice in writing of his intention to do so, or who shall be guilty of cowardice, shall be guilty of an offence, and be liable on conviction to imprisonment of either description which may extend to three months, or to fine which may extend to six months' pay, or to both.

For excise officer refusing to do duty or being guilty of cowardice.

(2) Any excise officer who shall—

Offences by excise officers.

- (a) wilfully fail in his duty to report any offence against this Ordinance or any rule or order made thereunder ; or
- (b) connive at the commission of any offence against this Ordinance,

shall be liable on conviction to imprisonment of either description which may extend to six months, or to fine which may extend to one year's pay, or to both.

For offences
not otherwise
provided for.

50. Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Ordinance, or of any rule or order made under this Ordinance, and not otherwise provided for in this Ordinance, shall on conviction be liable to fine which may extend to one hundred rupees, or, in default of payment of the fine, to imprisonment which may extend to six months, and, in the case of an offence continued after conviction, to such punishment as aforesaid for each day on which the offence is so continued.

Enhanced
punishment
after previous
conviction.

51. If any person, after having been previously convicted of an offence punishable under section 46 or section 47, subsequently commits and is convicted of an offence punishable under either of those sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Ordinance :

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XVIII of the Criminal Procedure Code, from being so tried.

Prosecution
restricted.

52. (1) No Magistrate shall take cognizance of an offence punishable—

(a) under sections 46, 47, or 50, except on his own knowledge or suspicion, or on the complaint or report of an excise officer ; or

(b) under section 48 or section 49, except on the complaint or report of the Excise Commissioner, Government Agent, or an excise officer authorized by either of them on that behalf.

(2) Except with the special sanction of the Attorney-General,¹ no Magistrate shall take cognizance of any offence punishable under this Ordinance unless the prosecution is instituted within a year after the commission of the offence.

Presumption
as to commis-
sion of offence
in certain
cases.

53. (1) In prosecutions under section 46 it shall be presumed, until the contrary is proved, that the accused person has committed an offence under that section in respect of—

(a) any excisable article ; or

- (b) any still, utensil, implement, or apparatus whatsoever for the manufacture of any excisable article other than toddy ; or
- (c) any such materials as are ordinarily used in the manufacture of any excisable article,

for the possession of which, or for his conduct in connection with which, he is unable to account satisfactorily ; and the holder of a licence, permit, or pass under this Ordinance shall be punishable, as well as the actual offender, for any offence under section 46 or section 47 or section 48 committed by any person in his employ and acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence :

Provided that no person other than the actual offender shall be punished with imprisonment, except in default of payment of fine.

(2) Where a person who is bound to give notice under section 43 of this Ordinance is prosecuted for the offence of intentionally omitting to give such notice in contravention of that section, it shall be presumed, until the contrary is proved, that such person has intentionally omitted to give such notice if an excise officer of a rank not below that of Superintendent certifies in writing under his hand, after such investigation as he may deem necessary, that he is satisfied that such person has omitted to give such notice.

[§ 3, 9 of 1956.]

54. (1) Whenever an offence has been committed under this Ordinance, the excisable article, materials, still, utensil, implement, or apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation.

What things
liable to
confiscation.

(2) Any excisable article lawfully imported, transported, manufactured, had in possession, or sold along with, or in addition to, any excisable article liable to confiscation under this section, and the receptacles, packages, and coverings in which any such excisable article, materials, still, utensil, implement, or apparatus as aforesaid is found, and the other contents, if any, of the receptacles or packages in which

the same is found, and the animals, carts, vessels, or other conveyance used in carrying the same, shall likewise be liable to confiscation.

Confiscation
how ordered.

55. (1) When in any case tried by him the Magistrate decides that anything is liable to confiscation under the foregoing section, he may order confiscation, or may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as he thinks fit.

(2) When an offence under this Ordinance has been committed, but the offender is not known or cannot be found, or when anything liable to confiscation under this Ordinance and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Government Agent, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing the person, if any, claiming any right thereto, and evidence, if any, which he produces in support of his claim ;

Provided further, that if the thing in question is liable to speedy and natural decay, or if the Government Agent is of opinion that the sale would be for the benefit of its owner, the Government Agent may at any time direct it to be sold ; and the provisions of this subsection shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Power to
compound
offences.

*For New Sentence
49/1961.*

56. The Government Agent or any excise officer specially empowered by the Minister¹ in that behalf may accept from any person whose licence, permit, or pass is liable to be cancelled or suspended under section 27, or who is reasonably suspected of having committed an offence under section 48 or section 50, ~~a sum of money not exceeding two hundred rupees in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be ;~~ and in all cases whatsoever in which any property has been seized as liable to confiscation under this Ordinance may release the

same on payment of the value thereof as estimated by such officer. On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

57. All offences under this Ordinance shall be summarily triable by Magistrates, who shall have power to award the punishments herein prescribed, anything in the Criminal Procedure Code, or any other enactment to the contrary notwithstanding.

Offences to be summarily triable by Magistrates.

CHAPTER X

MISCELLANEOUS

58. Nothing in the foregoing provisions of this Ordinance applies to the import, manufacture, possession, sale, or supply of any bona fide medicated article for medicinal purposes by medical practitioners, chemists, druggists, pharmacists, apothecaries or keepers of dispensaries; but the Minister¹ may by notification prohibit throughout Ceylon or within any local area the import, manufacture, possession, supply, or sale of any such article either absolutely or except under such conditions as he may prescribe, and the provisions of this Ordinance shall thereafter apply to any article so prohibited.

Ordinance does not apply to bona fide medicated articles.

59. No action shall lie against the Government of Ceylon or against any excise officer for damages in any civil court for any act bona fide done or ordered to be done in pursuance of this Ordinance, or of any law for the time being in force relating to excise revenue; and all prosecutions of any excise officer, and all actions which may be lawfully brought against the Government of Ceylon or against any excise officer, in respect of anything done in pursuance of this Ordinance, shall be instituted within six months from the date of the act complained of, and not afterwards.

Bar of actions.

Excise
notifications
to be judi-
cially noticed.
[§ 8, 25 of 1938.]

60. (1) Every excise notification shall be published in the Gazette.

(2) A court shall take judicial notice of every excise notification.

(3) Where an excise notification is printed—

(a) in any Excise Manual or other book or document purporting to be printed by authority or on the orders of Government or by the Government Printer or at the Ceylon Government Press ; or

(b) in any document purporting to be an extract from any issue of the Gazette,

it shall be presumed, until the contrary is proved, that an excise notification in identical terms was published in the Gazette.

(4) In this section—

“ excise notification ” means a notification made or issued under this Ordinance or for the purposes thereof ;

“ court ” has the same meaning as in the Evidence Ordinance.