

MEMORANDUM BY THE HON. MINISTER OF JUSTICEAmendment to the Customs Ordinance so as to provide
for better prevention and detection of smuggling

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The idea behind the attached Bill, which is being submitted for the consideration of Cabinet, is to implement the statement made in the recent Speech from the Throne about the introduction of legislation to curb smuggling.

2. First of all, the question has to be tackled from the point of view of the quality of punishment. The ordinary punishment at present provided by law for cases of smuggling is in some cases a penalty (which for all intents and purposes of law is a multa) of treble the value of the goods, including the duty payable thereon, or fifty pounds, whichever is the greater. In the case of a second or subsequent conviction, within a period of twelve months from the date of the previous conviction, the punishment may shoot up to imprisonment or hard labour for a term from one to six months.

3. The ordinary punishments for smuggling were at the time of the enactment of our Customs Ordinance in accordance with the U.K. Customs Consolidation Act, 1876, except that instead of fifty pounds the U.K. Act had one hundred pounds. But since then it has been found necessary to introduce imprisonment. Section 45 of the Customs and Excise Act, 1952, prescribes for improper importation of goods a penalty of treble the value of the goods or one hundred pounds, whichever is the greater, or imprisonment for a term not exceeding two years, or both.

4. The ordinary punishment in section 61 of our Customs Ordinance is now being brought into line with this. But there is another point in this connection which merits consideration. After laying down the ordinary punishment our section 61 has the following proviso:

"Provided that -

if the goods in respect of which the offender is proceeded against do not consist of wine, spirits or tobacco, or, being wine, spirits or tobacco, do not exceed ten gallons of wine, or five gallons of spirits, or twelve real weight of tobacco, the Court may adjudge

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that such offender shall, in lieu of the aforesaid penalty, forfeit a sum not less than double nor more than treble the value of such goods, including the duty payable thereof; or

if such goods, being wine, spirits or tobacco, exceed ten gallons but do not exceed thirty gallons of wine, or exceed five gallons but do not exceed fifteen gallons of spirits, or exceed twelve rtal weight but do not exceed thirty-six rtal weight of tobacco, the Court may mitigate the penalty laid down in the first part of this section to a sum not less than one-fourth:"

5. Now this proviso is not to be found in the U.K. Act on which our Customs Ordinance was largely modelled, nor, so far as can be ascertained, is it to be found in the legislation of other Commonwealth territories. Furthermore, as it is, it hardly squares up with the new hypothesis of imprisonment, for a magistrate may well argue that if in the cases referred to in the proviso the law is content with a reduction of the fine, a fortiori imprisonment may be excluded.

6. In any case the proviso provides for a reduction in punishment if the goods being tobacco do not exceed twelve rtal weight. Now twelve rtal of tobacco is close to 10,000 cigarettes and that is more than the Customs Authorities ordinarily lay their hands on and is in any case quite a sizeable amount, especially in the context of the announced drive for curbing tobacco smuggling. With great respect to the legislator of the time (bless his soul) the second part of the proviso is hardly intelligible. What is in fact stated is this. If the tobacco (costing say £30, plus duty) is less than 12 rtal in weight the minimum fine is twice the said amount, that is to say £60 and the maximum treble the said amount, that is to say £90. If it is more than 12 rtal but less than 36 rtal in weight (second part of the proviso) the ordinary fine of treble the amount may be reduced to a sum not less than one-fourth,

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that is to say, a minimum of £22.10s. 0d. That is, to put it at its mildest, a little cock-eyed.

7. The penalty for relapse is now proposed to be increased to imprisonment from six months to three years in addition to the prescribed fine.

8. These amendments are to be found in clause 1 of the attached Bill. Clauses 3, 5 and 6 are consequential.

9. Clause 4 of the Bill raises another interesting point. The present section 68 of the Customs Ordinance provides as follows:

"68. (1) If any officer of Customs or Police officer has reasonable cause to suspect that any prohibited or uncustomed goods are harboured, or kept or concealed in any house, building or other enclosure, within the meaning of section 362 of the Criminal Code (Chapter 12), and this is made to appear by a declaration on oath before the Attorney-General or a Magistrate of Judicial Police, it shall be lawful for the Attorney-General or such Magistrate, by warrant under his hand, to authorize such officer to enter and search such house, building or other enclosure, and to seize and carry away any prohibited or uncustomed goods found therein.

(2) It shall be lawful for such officer, in case of resistance, to break open any door and to force and remove any impediment or obstruction to such entry, search or seizure as aforesaid."

10. It has been argued that there is a case for extending these powers by enabling the officer of Customs or Police officer who has reasonable cause to suspect that any prohibited or uncustomed goods are harboured, kept or concealed in any such place as is mentioned in this provision and has reasonable cause to apprehend that there is imminent danger that any such goods will be removed or suppressed to carry out the search without the need of any warrant.

11. This would bring the special provision of the Customs Ordinance, which was modelled on English law, into line, at least to some extent, with the provision of section 362 of the Criminal Code, which reads as follows:

"362. (1) Saving the cases where the law provides otherwise, no officer of the Executive Police below the rank of Inspector shall enter any house, building or other enclosure for the purpose of effecting any search therein or arresting any person who has committed or is suspected of having committed any offence, without an order in writing from a superior officer, unless -

- (a) the offence is a crime not excepted under section 359 and there is imminent danger that the said person may escape or that the corpus delicti or the means of proving the offence will be suppressed; or
- (b) the person is detected in the very act of committing a crime not excepted under section 359; or
- (c) the intervention of the Executive Police is necessary in order to prevent the commission of a crime not excepted under section 359; or
- (d) the entry is necessary for the execution of any warrant or order issued by any other competent authority in the cases prescribed by law.

(2) The expression 'enclosure' does not include any plot of land enclosed by rubble walls."

12. In favour of the proposed amendment there is the factor of speed (though the time employed in making the sworn statement cannot be very considerable); against, there is the fact that this impinges on the question of human rights and a human rights-conscious Assembly may well go into the whole question of existing powers of search, which in Malta are, in truth, very wide indeed. It is true, on the other hand, that in England if there are reasonable grounds to suspect that any thing liable to forfeiture under the customs or excise Acts is kept or concealed in any building or place, any officer having a writ of assistance may enter that building or place at any time and search for such thing, but if the search is made by night he must be accompanied by a constable. Now a

writ of assistance (which may be used alternatively to a warrant issued, on a sworn information, by a justice of the peace) is a writ of very ancient origin granted by the High Court "and is, in effect, a general search warrant valid for the reign in which it is granted and for six months thereafter" (Halsbury, Statutes, 2nd ed., Vol. 32, pp. 887-8).

13. This is being stated for a proper and judicious appreciation and weighing up of all the arguments in a matter which is, from a policy point of view, rather delicate.

Hon. Members are invited to consider and approve the attached Bill.

16th November, 1963.

A BILL
entitled

AN ACT further to amend the Customs Ordinance, Cap. 60.

ENACTED by the Legislature of Malta:-

Short title.

1. This Act may be cited as the Customs (Amendment) Act, 1963, and shall be read and construed as one with the Customs Ordinance, hereinafter referred to as "the principal law".

Amendment of section 61 of the principal law.

2. Section 61 of the principal law shall be amended as follows:-

(a) for the words "except where any other pecuniary penalty is specially provided therefor, be liable to forfeit treble the value of the goods, including the duty payable thereon, or fifty pounds, whichever is the larger sum" there shall be substituted the words "be liable to a penalty of treble the value of the goods or one hundred pounds, whichever is the greater, or to imprisonment for a term not exceeding two years or to both" and

(b) for the provisos thereto there shall be substituted the following:

"Provided that in the case of a second or subsequent conviction for an offence under this section within a period of twelve months from the date of the previous conviction the offender shall be liable to imprisonment for a term from six months to three years, in addition to the pecuniary penalties herein prescribed;

And provided further that the penalties imposed by this section shall not apply in the case of an offence in connexion with the importation of goods contrary to a prohibition or restriction where a penalty is expressly prescribed for that offence by the enactment or other instrument imposing the prohibition or restriction."

Amendment of/....

Amendment of section 64 of the principal law.

3. In section 64 of the principal law for the words "All proceedings for the recovery of any pecuniary penalty imposed by this Ordinance" there shall be substituted the words "All proceedings for the recovery of any pecuniary penalty or otherwise under this Ordinance".

Amendment of section 68 of the principal law.

4. In subsection (1) of section 68 of the principal law there shall be added, at the end thereof, the following proviso:

"Provided that, where any officer of Customs or Police officer has reasonable cause to suspect that any prohibited or uncustomed goods are harboured or kept or concealed in any such place as aforesaid and has reasonable cause to apprehend that there is imminent danger that any such goods will be removed or suppressed, such officer may exercise in relation to such place as aforesaid, the powers mentioned in this section in the same manner as if he were authorized so to do by a warrant issued under this section."

Amendment of section 72 of the principal law.

5. In section 72 of the principal law for the words "Any proceedings for the recovery of any pecuniary penalty incurred under this Ordinance" there shall be substituted the words "Any proceedings for the recovery of any pecuniary penalty or otherwise under this Ordinance".

Amendment of section 73 of the principal law.

6. In section 73 of the principal law for the words "for the recovery of any penalty or forfeiture under this Ordinance" there shall be substituted the words "for the recovery of any pecuniary penalty or otherwise under this Ordinance."

Objects and Reasons

The purpose of this Bill is to amend the Customs Ordinance so as to provide for the better prevention and detection of smuggling. The penalties for smuggling offences will include imprisonment and in appropriate cases comparable to those referred to in section 362 (1) (a) of the Criminal Code it will be possible to effect searches for contraband goods in houses, buildings or other enclosures without the necessity of a warrant.