

THE WHARFAGE ACT

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WHARFAGE

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SCHEDULES

THE WHARFAGE ACT

[1st July, 1895.]

Cap. 412.
Law
44 of 1956.
Acts
15 of 1966,
12 of 1967,
28 of 1971,
53 of 1975,
15 of 2014
Sch.

Short title.

1. This Act may be cited as the Wharfage Act.

2. In this Act—

Interpreta-
tion.

“the Authority” means the Authority established by section 4 of the Port Authority Act;

15/1966
S. 2(a).

“Harbour of Kingston” means all the body of water between the shores in the parishes of Kingston, St. Andrew, Saint Catherine, to the northward of the Palisadoes, from Harbour Head to Port Royal, and a straight line from the westernmost point of the land at Fort Charles, in Port Royal, to the southernmost point of the Twelve Apostles Battery;

“wharfage rate” means the rate fixed pursuant to the provisions of Schedule A in relation to goods landed on or delivered at or shipped from a wharf or ships berthed at a wharf and which is exclusive of any payment authorized or charge imposed under section 18;

15/1966
S. 2(b).
Schedule A.

12/1967
S. 2.

“the Tariff” means the wharfage rates regarded as a scheme of rates;

“the Tariff Fund” means the fund established under section 3;

“wharfinger” means the person in occupation of any public wharf and carrying on the business of landing, receiving and otherwise dealing with thereat the goods of other people;

“goods” means any article, goods, wares, merchandise, produce, being or thing, animate or inanimate, that

is brought to any wharf by water with a view to its being landed thereat or which is brought to any wharf by land with a view to its being put on board ship;

44/1956
S. 4.

“Minister” means the Minister responsible for shipping;

53/1975
S. 2.

“wharf warrant” or “warrant” means a warrant issued under the provisions of this Act.

Establish-
ment of
Tariff
Fund.
15/1966
S. 3.
Schedule A.

3.—(1) There is hereby established a fund called the Tariff Fund into which shall be placed, from time to time and in the circumstances mentioned in the rules in Schedule A, and in the manner provided in those rules the sums specified in those rules as payable by wharfingers.

(2) The Tariff Fund shall form part of the revenues of the Authority and accordingly may be used for the purposes prescribed in the Port Authority Act.

What
constitutes a
public
wharf.

4. If any wharfinger or any person in his employment shall receive payment for any goods landed on or delivered at or shipped from such wharf, or for any vessel lying, or delivering, or landing thereat, or on the adjacent beach or riverside, the said person in possession shall be deemed to be carrying on the business of a wharfinger under the Licences on Trades and Business Act and the said wharf shall be declared and held to be a public wharf; and if any goods be landed or shipped at or from any beach or riverside in any harbour or port of this Island, where there is a public wharf (not being the goods of the proprietor or occupier of such beach, or goods which such proprietor or occupier has landed at or shipped from any such beach or riverside under any contract with the owner for the transport of the same by sea), the wharfinger of the nearest public wharf in such harbour or port shall, subject to the provisions in section 12 be entitled to demand and recover

from the owner of such goods if known, or if unknown from the proprietor or occupier of such beach or riverside, permitting the use of such beach or riverside for such purpose, payment of the appropriate wharfage payable on such goods under the provisions of this Act. ^{15/1966} S. 4.

5.—(1) Every wharfinger shall be obliged to keep or cause to be kept a book, wherein shall be fairly entered the marks and numbers of all goods which shall be landed on or delivered at his wharf, and also if known, the names of the persons by whom, landed or delivered, and the names of the persons to whom the same are to be delivered, and the names of the vessels out of or on which the said goods shall be taken or shipped, and shall also give receipts for all goods that shall be so delivered or landed at or upon his wharf; and all Revenue Officers and persons having an interest in any goods landed at or shipped from such wharf shall in respect of the entries of such goods have free access to the same during the working hours of the day at such wharf; and any wharfinger who shall neglect to keep such book, and to make such entries, or to give receipts as aforesaid, or refuse access to such book, if demanded, to any officer or person as aforesaid, shall forfeit, for every offence a sum not exceeding twenty dollars. Wharf book.

(2) In addition to the books and receipts required by the preceding subsection to be kept and to be given respectively by wharfingers for goods landed on or delivered at wharves, every wharfinger shall upon request made during working hours in writing by the person or persons whose names shall be entered in the books of such wharfinger as the person to whom or on whose order any goods on such wharf are to be delivered, and on payment being made to such wharfinger of all charges which have accrued in respect of such goods, issue as such person or persons may direct one or more warrants in the form set forth in Schedule B. Such warrant shall be kept bound ^{15/1966} S. 5 (a) & (b). Schedule B.

in counterfoil and the wharfinger shall deliver the warrant to the person making request therefor as aforesaid and shall keep the counterfoil thereof and shall also keep a book in which he shall keep entered the number and date of issue of every such warrant, the name of the person to whom it is issued, the goods represented thereby and the date of the delivery thereof or other dealing therewith and the name of the person to whom such goods are delivered or on whose order they are otherwise dealt with.

Wharfinger
may deliver
on demand
goods
represented
by warrant.

15/1966
S. 6.

6. Every wharfinger shall either personally or by his servant on demand made during the working hours by or on behalf of the person entitled to delivery of any goods represented by any wharf warrant, and upon surrender of such warrant, and on payment being tendered for the wharfage and storage (if any) of the goods represented thereby, according to the appropriate wharfage rates fixed pursuant to this Act as applicable to the same which may have accrued after the issue of the said warrant, deliver such goods.

Wharfinger
shall not
deliver
goods unless
warrant sur-
rendered to
him.
44/1956
S. 3.

7. A wharfinger shall not except in accordance with sections 8 and 17 deliver or otherwise deal with any goods mentioned in any wharf warrant except upon the surrender to him of such warrant by or on behalf of the person for the time being entitled to the delivery of such goods.

Loss of
warrant.

8.—(1) If a wharf warrant shall be lost the wharfinger by whom the same was issued shall, upon the application of the person representing himself to be the person for the time being entitled to the delivery of the goods mentioned in such warrant and upon proof by statutory declaration that such person sustains the character in relation to such goods which he represents and of the loss of such warrant, give notice by advertisement in each issue of two newspapers published in this Island one at least of which shall

be a newspaper published daily in Kingston. Such advertisement shall continue for two weeks and shall set forth the particulars of the warrant stated to have been lost.

(2) If at the expiry of seven days after the last of such advertisements no one other than the person aforesaid claims to be entitled to the delivery of the goods represented by such warrant the wharfinger may deliver or otherwise deal with such goods as if the said applicant were the person for the time being entitled to the delivery of the goods represented by such warrant and had surrendered such warrant and shall cause an entry to be made both on the counterfoil of the lost warrant and in the book required by subsection (2) of section 5 to be kept that such warrant has been lost and of the advertisements which have been made of such loss before the delivery or other dealing with such goods.

(3) If the person representing himself to be the person for the time being entitled to the delivery of any goods represented by any warrant which has been lost shall require immediate delivery of such goods before the expiry of the time in this section before limited the wharfinger shall, upon receipt of the proof above mentioned and upon receipt of a sum which shall in his opinion be sufficient to cover the price of such goods, deliver or otherwise deal with the same as if the applicant were the person entitled to delivery thereof and had surrendered the warrant therefor, and if at the expiry of seven days after the last of such advertisements as aforesaid no other person shall claim to be entitled to the delivery of the said goods he shall refund the sum so deposited with him to the person depositing the same.

9. A wharfinger shall not issue more than one warrant for the same goods, provided, however, that every wharfinger shall on demand in writing made during working hours by

Wharfinger
shall not
issue more
than one
warrant for
same goods.

the person entitled to delivery of any goods represented by a wharf warrant upon surrender to him of such warrant, issue to such person two or more warrants each for such parts not being less than one complete package of the goods represented by such warrant as such person shall request.

Who is
entitled to
delivery of
goods.

10. The person for the time being entitled to the delivery of goods represented by a wharf warrant shall be the person whose name is set forth in such warrant as the person to whom such goods are to be delivered or if such warrant be specially endorsed the person to whom the same is last endorsed, or if such warrant be generally endorsed then the bearer thereof.

When
warrant
deemed to
have been
surrendered.

11. No wharf warrant shall be deemed to have been surrendered unless it is endorsed by the person for the time being entitled to the delivery of the goods represented thereby and is delivered to the wharfinger who issued the same with a view to its being retained by him.

Duties of
wharfinger.

12. Every wharfinger is hereby obliged, to the extent of the accommodation available, to receive, ship or deliver all goods, wares and merchandise, other than explosives, brought to his wharf and to put into a good proper store or stores, or other safe and dry place, such of the goods, wares and merchandise as are liable to damage by exposure and are by custom ordinarily placed in stores, and to weigh, gauge, measure, count or examine, according to their nature and quality, all goods, wares and merchandise when received or landed, and if thereto required when delivered or shipped at his wharf.

For the purposes of this section, coconuts, coals, dye-wood, bitter wood, cedar, mahogany, and other woods, lumber, shingles, and heavy pieces of machinery are to be considered goods which it shall not be necessary to place in a store.

In any case in which any goods shall be refused to be received for want of accommodation and the owner of such goods lands or delivers such goods on any other wharf, beach or riverside he shall not thereby render himself liable to wharfage rates under section 4.

13. Every wharfinger shall, either personally or by his servant, on demand made during the working hours by or on behalf of the person or persons whose names shall be entered in the books of such wharf as the person or persons to whom or on whose order any goods on such wharf are to be delivered, and on production of the bill of lading, ticket, receipt, or other voucher therefor, and on payment being tendered for the wharfage and storage (if any) of such goods, according to the appropriate wharfage rates fixed pursuant to this Act as applicable to the same, deliver such goods or any part of them:

Wharfinger
to deliver
goods.

15/1966
S. 7.

Provided nevertheless that nothing in this section shall be deemed to deprive or affect the general lien conferred by law on wharfingers on goods received into their custody or possession for wharfage dues payable by the owner thereof, whether before or after the passing of this Act.

14. Every wharfinger shall erect and maintain on his wharf a proper crane for landing goods, and adequate sheds, or other places of security for storing such goods as may be brought to the same; and no articles liable to damage from exposure shall be allowed to remain exposed longer than the time necessary for removing them to the said sheds or places of security; and every description of goods liable to damage from contact with the ground shall be placed on skids of the height of four inches at least from the ground, and be properly secured, under a penalty, not exceeding four dollars for every day in default, irrespective of liability to an action at law for

Duty to
erect crane
and sheds,
etc.

damages in respect of any goods which for want of such precaution shall be damaged or shall be lost or stolen from such wharf.

Wharfinger
to make
declaration
half-yearly.

15. Every wharfinger is hereby obliged, within thirty days after the 30th day of June and the 31st day of December in every year, to make a declaration before a Justice, that the accounts entered in his wharf book from the day of preceding (being the day on which he commenced to keep the said wharf, or the day up to which he had previously made the declaration under this Act) are just and true, and in conformity with the law in that respect; and every such declaration shall be entered in the said wharf book at the close of the entries therein for the immediately preceding six months, which declaration shall be in the words, or to the effect following—

I, *A. B.*, wharfinger of do declare that all the accounts of wharfage, storage, weighing, prices, shipping, receival, and delivery of all goods, wares and merchandise, brought to this wharf from the day of to the day of are just and true, and entered to the best of my knowledge and belief, in pursuance of, and in conformity to the directions of the Wharfage Act.

Taken and declared at before me
this day of 19 .

C.D., (J.P.)

and the entries in such book, so declared to as herein-before directed, or examined extracts from or copies thereof duly declared to before a Justice, under the provisions of the Voluntary Declarations Act, shall be received, deemed and taken in the several Courts of Law

and Equity of this Island, as good and valid evidence of the several matters entered in such book in compliance with the provisions of this section.

16.—(1) If any wharfinger shall neglect or refuse to do and perform his duty in any of the particulars hereinbefore set forth for which no penalty is by this Act imposed, or shall ask, demand or receive any greater or larger wharfage rates or any other payments in respect of the use of the wharf than are fixed by law, he shall be guilty of an offence under this Act and shall on conviction before a Resident Magistrate be liable to imprisonment for a term not exceeding six months or to a penalty not exceeding four hundred dollars, and in the case of a continuing offence to a further penalty not exceeding forty dollars for each day on which the offence continues.

Wharfinger
neglecting
duty or
asking
larger rates
liable to
penalty.
15/1966
S. 8.
12/1967
S. 3 (a), (b),
(c).

(2) Any person, other than the wharfinger of a wharf, who except with the prior approval of the Authority demands or receives in respect of that wharf any payment whatsoever in respect of the use of the wharf shall be guilty of an offence and liable on conviction before a Resident Magistrate to imprisonment for a term not exceeding six months, or to a penalty not exceeding four hundred dollars and in the case of a continuing offence to a further penalty not exceeding forty dollars for each day on which the offence continues.

12/1967
S. 3 (c).

(3) Where a body corporate is guilty of an offence against this section, every director of the body corporate shall, unless he is proved to have been ignorant of or to have attempted to prevent the commission of that offence, be liable to the same penalty as if he had committed the offence.

17.—(1) The wharfage rates payable under this Act shall be such rates as may from time to time be fixed pursuant to the provisions of Schedule A.

Wharfage
rates.
15/1966
S. 9.
Schedule A.

(2) The wharfage rates aforesaid shall in the case of any goods landed at any wharf include and cover the receiving from the ship's side if the ship be alongside the wharf, and, if not, from the lighter bringing the same, and the stowing, shedding, weighing, skidding, gauging, properly securing, and delivering together with all labour involved therein, and, in the case of goods received for shipment, the wharfage rates shall include and cover the receiving and delivery to the ship, if the ship be alongside the wharf, and, if not, to the lighter that is to take the same, together with all labour involved therein :

Provided that as to gauging the wharfinger shall not be called upon to gauge any rum or other spirits in any store or warehouse which is secured under revenue lock.

Storage of
goods on
wharves in
Kingston.
15/1966
S. 9.
28/1971
S. 2 (a).
53/1975
S. 3(a), (b).

18.—(1) In the case of any wharf at the Harbour of Kingston—

- (a) the wharfage payable on goods landed thereat shall cover and include the storing of such goods for a period of seven clear days from the date of the landing thereof or, where such goods are landed for the purpose of trans-shipment such period as the Authority may in each particular case allow; and in the case of goods received for shipment such wharfage shall cover storing for a period of seven clear days prior to the arrival of the ship by which they are to be shipped;
- (b) the Minister may from time to time by order, which shall be subject to negative resolution of the House of Representatives, prescribe the rates at which additional sums shall be payable in respect of goods left on a wharf after the period allowed by paragraph (a), and any such order—
 - (i) shall specify the periods of time covered by such rates and may specify different rates for different periods during which goods

remain on a wharf after the period of seven clear days aforesaid; and

- (ii) may contain such consequential, supplemental, ancillary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of carrying the order into effect;
- (c) notwithstanding anything to the contrary in this Act and subject to the provisions of the Customs Act, where any goods remain on a wharf after the period allowed by paragraph (a) the wharfinger may send by registered post to the consignee or exporter, as the case may be, or his agent, notice in writing to remove them within such time, being not less than five clear days after the day of the posting of the notice, as may be specified therein and, in default of compliance with such notice, the wharfinger may remove the goods or cause them to be removed to an approved warehouse; and where a wharfinger removes goods or causes goods to be removed as aforesaid, he shall—
 - (i) be entitled to recover the actual cost of such removal as if the same were storage due on such goods; and
 - (ii) be liable to pay to the keeper or occupier of the approved warehouse to which the goods have been removed such charges as may be payable by virtue of regulations made under subsection (3) of section 19, and such payment shall entitle the consignee or exporter, as the case may be, to the storing of such goods in such approved warehouse for such period as may be allowed by the said regulations.

A notice in accordance with the foregoing provisions of this paragraph is duly given if sent by post as aforesaid to the last-known place of business or abode of the addressee.

28/1971
S. 2 (b).

(2) Notwithstanding anything to the contrary, the Minister may from time to time by order vary the period of storage allowed by paragraph (a) of subsection (1) and thereupon any reference to such period in this Act shall be construed as a reference to the period prescribed by the Minister.

Approved
warehouses.
15/1966
S. 9.

19.—(1) The Minister may upon the application of the owner or occupier of any premises appoint such premises to be an approved warehouse for the purposes of paragraph (c) of section 18 subject to such conditions and restrictions as the Minister may from time to time impose.

(2) Where a wharfinger has removed goods, or caused goods to be removed, to an approved warehouse pursuant to paragraph (c) of section 18, such goods shall during the period they are stored in such warehouse be deemed to be in the possession of the wharfinger, and the provisions of this Act shall apply to such goods as if they remained stored on his wharf.

(3) The Minister may make regulations generally for the fixing from time to time by the Authority of the rates of charges payable to the keepers or occupiers of approved warehouses to which goods are removed as aforesaid, and without prejudice to the generality of the powers hereby conferred may make regulations—

- (a) for the making of representations to the Authority by persons likely to be affected by such rates;
- (b) for the hearing by the Authority of representations in relation to such rates; and
- (c) providing for the period of storage to which persons paying such rates are entitled.

20.—(1) In the case of any wharf in relation to which section 18 does not apply—

Storage of
goods on
wharves
outside of
Kingston.

(a) subject to the provisions of paragraph (b)—

15/1966
S. 9.
28/1971
S. 3 (a).

- (i) the storing deemed to be covered and included in the wharfage payable on goods landed thereat shall include and cover storing for a period of three months only, such period to run from the day of landing:

Provided that in the case of goods landed at any such wharf which by the terms of the bill of lading thereof are required to be landed free of charge to the consignee for landing, the period of three months shall be extended by fourteen clear days;

- (ii) in the case of goods received for shipment, the wharfage from the date of such receipt shall cover and include their storing for three months prior to the arrival of the ship by which they are to be shipped;
- (iii) in any case in which any such storing exceeds the period fixed in that behalf by sub-paragraph (i) or (ii), the wharfinger shall be entitled to an additional payment at the rate of one-fourth the wharfage payable in respect of the goods for every month or part of a month beyond the period fixed as aforesaid;

(b) the wharfage shall, in the case of lumber and shingles, cover a keeping on the wharf not exceeding three months, and in the case of coal or patent fuel not exceeding six months; and where lumber or shingles are left on a wharf for a period exceeding three months, the wharfinger shall be entitled to an additional payment at the rate of one-twelfth part of the original wharfage for every month or

part of a month in excess of the three months; and where coal or patent fuel is left for a period exceeding six months, at the rate of $2\frac{1}{2}$ cents per ton additional, and at the expiration of twelve months, the wharfinger shall be entitled to charge for any such coal or patent fuel anew as if then first landed at the wharf;

- (c) before any additional charge authorized by paragraph (a) or (b) is made, three clear days' notice in writing shall be given to the person chargeable either personally or to his agent to remove the same, with an intimation that, if he fails to do so, the additional charge so authorized will be payable; and in case such person or agent cannot be found such notice may be posted to the last-known place of business or abode of such person or agent;
- (d) where any goods are left on a wharf after the time allowed under sub-paragraph (i) or (ii), as the case may be, of paragraph (a) a wharfinger may, by giving notice in writing by registered post to the consignee or shippers of such goods request that such goods be removed from his wharf within such time as may be specified in such notice being not less than three months after the date of such notice; and, in default of such goods being removed, the wharfinger shall be entitled to the full wharfage for each month or part of a month during which such goods may remain on the wharf.

28/1971
S. 3 (b).

(2) Notwithstanding anything to the contrary, the Minister may from time to time—

- (a) by order vary the period of storage allowed by sub-paragraph (i) or (ii) of paragraph (a) of subsection (1) or the period of keeping allowed in paragraph

- (b) thereof and thereupon a reference to such period in this Act shall be construed as a reference to the period prescribed by the Minister;
- (b) by order, which shall be subject to negative resolution of the House of Representatives, vary the rates at which additional sums shall be payable in respect of goods left on a wharf after the period of storage allowed by subparagraph (i) or (ii) of paragraph (a) of subsection (1) or the period of keeping thereof allowed by paragraph (b) thereof (or as the case may be, such other period prescribed by the Minister under paragraph (a) of this subsection) and any such order—
- (i) shall specify the periods of time covered by such rates and may specify different rates for different periods during which goods remain on a wharf after the period of storage or keeping allowed as the case may be; and
 - (ii) may contain such consequential, supplemental, ancillary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of carrying the order into effect.

21.—(1) If any dispute arises as to whether any or what wharfage or storage is payable on any goods, the person entitled to the delivery of the goods or his agent shall deposit with the wharfinger the amount demanded by him, and may, within three months after such deposit, make application to the Authority to decide whether any or what wharfage or storage is payable, and the Authority shall decide the application.

Disputes as
to wharfage,
and storage.
15/1966
S. 9.

(2) The person entitled to the delivery of the goods or his agent, or the wharfinger, if dissatisfied with the deci-

sion of the Authority given pursuant to subsection (1), may, within one month after such decision, appeal to the Court of Appeal but if no such appeal is instituted the decision of the Authority shall be final and conclusive.

(3) Where the Authority so decides or, in case of an appeal, if it is determined that the amount payable was less than the amount deposited, the wharfinger shall refund to the person entitled to delivery of the goods or his agent the difference between the deposit and the amount found to be due.

Powers of
Authority
under this
Act.
15/1966
S. 9.

22.—(1) Subject to the provisions of this Act, the Authority shall have power, for the purpose of the discharge of the functions assigned to the Authority by this Act—

- (a) by summons signed by the chairman or by the secretary of the Authority to summon and enforce the attendance of witnesses and parties concerned, and to compel the production of books, plans, and documents by the same means and, so far as may be, in the same manner as provided in the Witnesses Expenses Act in the case of any legal proceeding before a court;
- (b) to examine witnesses and parties concerned on oath, which oath the chairman or secretary of the Authority is hereby empowered to administer.

(2) Any person who—

- (a) without sufficient cause, fails or refuses to attend before the Authority in obedience to a summons under this rule, or fails or refuses to produce any paper, book, record or document which he was required by such summons to produce; or
- (b) being a witness, leaves the Authority without the permission of the Authority; or

- (c) being a witness, refuses without sufficient cause, to answer any question put to him by or with the permission of the Authority; or
- (d) wilfully obstructs or interrupts the proceedings of the Authority,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred dollars or in default of payment thereof to imprisonment with or without hard labour for a period not exceeding six months.

(3) All process and proceedings before the Authority under this Act shall be free of stamp duty.

23. A copy of the Tariff shall be affixed to some public place on every public wharf.

Publication
of rates.
15/1966
S. 10.

24. If any wharfinger shall knowingly give, lend, or use, or consent, or be in any way privy to any person in his employment giving, lending, or using any goods landed at or received on his wharf without the consent of the owner of, or person entitled to, the said goods, first had and obtained, such wharfinger shall, on information by the owner of such goods and on summary conviction be liable to a penalty not exceeding twenty dollars or imprisonment not exceeding thirty days, without prejudice to any other remedy at law by the owner or party entitled to such goods.

Penalty for
giving, lending
or using
goods on
wharf without
consent
of owner.

25. Every wharfinger receiving logwood, fustic or other dyewoods, or other woods, or lumber, staves, or shingles upon his wharf, shall weigh such dyewoods or other woods, and take an account of the measurement of such lumber, and count such staves and shingles, and enter in the book to be kept by him as aforesaid against the entry of the said articles, the result of such weights, measurements, or counting, with the dates when made, and shall if required place the said several articles respectively in separate lots; and

Wharfage of
dyewoods,
lumber,
shingles, etc.

every such wharfinger as aforesaid neglecting to perform any of such duties shall on summary conviction be liable to a penalty not exceeding twenty dollars:

Provided that whenever any wharfinger is unable from want of space to comply with the requirement as to placing dyewood or other woods in separate lots, he shall before accepting delivery of such wood give the owner notice in writing of his inability so to do, and such owner may thereupon store such dyewoods or other woods on and ship the same from any other wharf or beach or riverside without rendering himself liable to wharfage under section 4 to the wharfinger giving such notice.

Goods remaining on wharf one year may be sold.

15/1966
S. 11 (a)

26. In case any goods shall have remained on any public wharf for a period of one year from the landing thereof and the same shall be unclaimed, or the person or persons to whom the same shall have been consigned or belong shall refuse or neglect to pay the person in possession of such wharf the legal rates of wharfage, landing, and storing of such goods, or such lower rate as may have been agreed upon, or in case any goods shall remain on any public wharf after the expiration of a notice given under paragraph (c) of subsection (1) of section 18 or for a period of seven days after the expiration of a notice given under paragraph (d) of subsection (1) of section 20; then and in every such case it shall be lawful for the wharfinger to sell, or cause to be sold by public auction, such goods; and the moneys arising from such sale shall be applied and appropriated by the person in possession of such wharf in defraying the amount due for wharfage, landing, and storage as aforesaid, and the expenses of sale, including the expenses of advertising as hereinafter directed, and the residue of the said moneys, shall be paid to the person or persons entitled thereto, if known, or if not known, or if such person or persons shall refuse to receive the same, to the Accountant-General of this Island to be

by him kept without interest until the same shall be claimed by the person or persons legally entitled thereto, on due proof to the satisfaction of such Accountant-General:

Provided that it shall not be lawful for the wharfinger to sell or dispose of any goods, unless he shall first have advertised the same by an insertion in the *Gazette* each week for four consecutive weeks and in the event of such goods being of a value of ten dollars or upwards, two insertions on alternate days in two Jamaica newspapers, giving full and specific particulars of such goods, and the dates of their landing, and by what vessel, the port from whence shipped, and the names of the shipper and consignee thereof, if within his knowledge.

15/1966
S. 11(b).

27. In case the wharfinger shall, for the space of fourteen days after any such sale as aforesaid, neglect to pay the surplus moneys arising from any such sale to the party entitled, if known, or if not known, or if he shall refuse to receive the same, to the Accountant-General of this Island, every such person so offending shall forfeit and pay a sum not exceeding forty dollars, to be recovered by plaint at the instance of the Attorney-General, in the Resident Magistrate's Court of the parish where the sale shall have taken place.

Penalty for retaining surplus proceeds of sale.

28. It shall be the duty of every wharfinger to give notice to any party having goods at his wharf of any loss likely to accrue thereto, of which such wharfinger shall have reasonable cause of apprehension, and in the event of such loss, without such notice having been given, such wharfinger shall be liable to forfeit and pay a sum not exceeding ten dollars:

Wharfinger to give notice to parties of any loss apprehended to goods.

Provided that nothing herein contained shall prevent the party suffering such loss from enforcing his remedy for the value thereof by action at law or otherwise.

15/2014
Sch.

29. [*Deleted by Act 15 of 2014, Schedule*].

Books to be
preserved for
six years.
15/1966
S. 12.

30. All books required to be kept in pursuance of this Act shall be carefully preserved by the wharfinger and be accessible to the Authority and to all parties as aforesaid, for the space of six years from the period of the completion of all entries therein, under a penalty of forty dollars.

Recovery of
penalties.

31. All penalties under this Act, not declared how to be recovered, may be recovered in a summary manner in the parish where the offence was committed, and shall be appropriated and applied to the use of the Government of this Island.

Charges
for con-
tainers.
53/1975
S. 4.

32.—(1) Notwithstanding anything contained in any other provision of this Act, the Authority may, in respect of any wharf operated by it or by any wharfinger pursuant to any agreement with the Authority, from time to time determine the charges which shall be made for—

- (a) the loading of containers;
- (b) the unloading of containers;
- (c) the movement of containers;
- (d) the receiving of containers;
- (e) the delivery of containers;
- (f) any other service of whatever nature rendered on or in connection with that wharf in relation to containers.

(2) Any amount charged in respect of containers pursuant to this section shall not, except to such extent, if any, as the Authority may decide, be taken to constitute any part of, or to affect in any other respect, the wharfage rates payable under section 17 or any additional sums payable under section 18 or section 20 in relation to those containers or the contents thereof.

33.—(1) A tax to be known as a wharfage cess shall be paid by any wharfinger to whom additional sums are payable for the storing or keeping on his wharf of goods for any period—

Wharfage
cess.

- (a) in excess of the period allowed by paragraph (a) of subsection (1) of section 18 or by paragraph (a) or (b) of subsection (1) of section 20; and
- (b) ending after the 30th day of November, 1974.

(2) The rate of the wharfage cess shall be seventy-five *per centum* of the additional sums referred to in subsection (1).

(3) The wharfage cess payable by any wharfinger shall be paid by him at such times and in such manner as the Authority may specify from time to time by notice in writing given to the wharfinger.

(4) The Minister may by order, which shall be subject to affirmative resolution of the House of Representatives, vary the rate of the wharfage cess.

(5) The Authority may, if it thinks it just to do so, waive, remit or refund in whole or in part the wharfage cess payable by any person, and any such waiver, remission or refund may be subject to such conditions as the Authority may see fit to impose.

34.—(1) Subject to the provisions of subsection (2) the House of Representatives may from time to time by resolution impose upon goods imported into Jamaica and landed—

Wharfage
tax.

- (a) on any public wharf; or
- (b) at any beach or riverside in any harbour or port, whether a public wharf is in that harbour or port or not,

a tax to be known as a wharfage tax and may revoke, reduce, increase or alter any such tax and may provide for exemptions therefrom.

(2) No wharfage tax shall be payable upon goods imported free of customs duty by virtue of the Bauxite and Alumina Industries (Encouragement) Act.

(3) The importer of goods in respect of which wharfage tax is payable shall—

- (a) where those goods are landed on a public wharf, pay the wharfage tax to the wharfinger at the time of delivery of the goods;
- (b) where those goods are landed at any other place, pay the wharfage tax, as soon as is practicable after the landing of those goods, to the owner, or the manager, or any other person having control, of that place.

(4) A wharfinger or any of the persons referred to in paragraph (b) of subsection (3), as the case may require shall, on behalf of the Authority, collect from the importer the wharfage tax payable in respect of any goods landed on that wharfinger's wharf, or at that other place, as the case may be, and any person who fails to do so shall, notwithstanding that failure, pay to the Authority the amount of the wharfage tax.

(5) In this section "import" and "importer" have the meanings respectively assigned to those expressions by the Customs Act.

Minister
responsible
for finance
may make
interim
order.

35.—(1) Notwithstanding anything contained in section 34 the Minister responsible for finance may by order increase or reduce the wharfage tax and from such date as shall be specified in the order (not being earlier than the date of publication of the order in the *Gazette*), and until the order ceases to be in force, the wharfage tax specified in the order shall be payable in lieu of any wharfage tax payable prior thereto.

(2) Where any wharfage tax is reduced by an order made under this section, every person who is liable to pay

wharfage tax shall pay the reduced wharfage tax and in addition shall deposit with the wharfinger or the Authority, as the case may require, the difference between the wharfage tax payable prior to the date specified in the order and the wharfage tax payable under the order during the period it continues in force.

36.—(1) Every order made under section 35 shall, within forty-two days from the date of its first publication, be submitted to the House of Representatives and the House of Representatives may by resolution confirm, amend or revoke the wharfage tax payable under that order, and upon publication of the resolution of the House of Representatives in the *Gazette* the resolution shall have effect in place of the order.

Interim order to be confirmed, revoked, etc., by House of Representatives.

(2) Any order which is not submitted to the House of Representatives within the period of forty-two days as aforesaid shall *ipso facto* expire.

37.—(1) So much of any wharfage tax paid under any order made under section 35 as may be in excess of the wharfage tax payable immediately after that order ceases to be in force shall be repaid to the person who paid that tax.

Excess to be refunded on expiry of order.

(2) So much of any sum deposited in accordance with subsection (2) of section 35 as, together with the wharfage tax paid, is equal to the wharfage tax payable after the order ceases to be in force, shall be brought to account by the wharfinger or the Authority, as the case may require, as wharfage tax and the balance, if any, shall be refunded to the depositor.

38. The Minister responsible for finance may, after considering recommendations made to him by the Authority in respect of any application to the Authority by any person liable for payment of wharfage tax under this Act, waive, remit or refund that tax in whole or in part and

Power to waive, remit or refund wharfage tax.

any such waiver, remission or refund may be subject to such conditions as the Minister responsible for finance may see fit to impose.

Refund of
overpay-
ment.

39.—(1) Any amount paid as wharfage tax which is in excess of the amount required to be paid under this Act shall be refunded by the Authority, on the production to the Authority of such evidence as it may require as proof of such overpayment.

(2) Any application for a refund under subsection (1) shall be made within ninety days of the date of the overpayment to which it relates or such longer period as the Authority may allow if satisfied that, in the special circumstances of the case, it was not reasonably practicable for the application to be made within ninety days as aforesaid.

Wharfage
cess and
wharfage
tax to be
placed in
the Tariff
Fund.

40.—(1) All sums paid as wharfage cess and wharfage tax shall be placed in the Tariff Fund and become a part of that Fund.

(2) If any sum payable as wharfage cess or wharfage tax is not paid in accordance with this Act, that sum may be recovered—

- (a) summarily as a civil debt at the suit of the Authority in a Resident Magistrate's Court; or
- (b) by the Authority in like manner as taxes, duties and arrears are recovered by the Collector of Taxes under sections 46 and 47 of the Tax Collection Act.

Records
and
returns.

41.—(1) Every wharfinger shall, in respect of wharfage cess payable by him, keep such books, records and accounts as may be prescribed and do the things specified in paragraphs (c) and (d) of subsection (2) subject to such modifications as the context may require.

(2) Every person to whom wharfage tax is paid under subsection (3) of section 34 shall—

- (a) at such times and in such manner as the Authority may specify from time to time by notice in writing given to that person, pay the wharfage tax collected by him;
- (b) keep, in respect of the wharfage tax paid to him, such books, records and accounts as may be prescribed;
- (c) permit any person authorized in writing in that behalf by the Authority to enter any premises on which those books, records or accounts are kept and to inspect and make copies of entries in those books, records and accounts;
- (d) at such times and to such persons as the Authority may specify by notice in writing given to that person, make such returns as may be prescribed.

(3) The Minister may by order prescribe anything which may, pursuant to this section, be prescribed.

15/1966
S. 13.

SCHEDULE A (Sections 2, 3, 17 (1))

Wharfage Rates Rules

PART I. General

1. These Rules may be cited as the Wharfage Rates Rules.
2. In these Rules—
 - “Class I wharf” means a public wharf not used as such before the 1st day of January, 1966;
 - “Class II wharf” means any public wharf which is not a Class I wharf;
 - “wharf” includes—
 - (a) plant and equipment used for the purposes of a wharf;
 - (b) such passenger handling facilities used in connection therewith as may be approved by the Minister.

PART II. Alteration of Tariff

3. The Tariff shall be fixed, and may upon review from time to time be altered, in accordance with these Rules.
4. Subject to the provisions of these Rules the Authority shall as soon as may be practicable after the commencement of these Rules proceed to the fixing of the Tariff, and from time to time thereafter review the same, upon an application under rule 5, or may do so of its own motion.
5. An application for the fixing or review of the Tariff may be made to the Authority either—
 - (a) by any wharfinger; or
 - (b) by any other person:

Provided that the Authority shall not entertain any application for the review of the Tariff under this rule—

 - (i) within twelve months after the publication of any decision of the Authority pursuant to rule 12; or
 - (ii) while an appeal from any such decision, or while a rehearing ordered upon any such appeal, is pending.
6. (1) Where an application is made to the Authority under rule 5 (not being an application which the Authority refuses to entertain pursuant to that rule) the person making the application (hereinafter referred to as “the applicant”) shall cause to be published in the form and manner specified in paragraph (2) a notice of application stating that representations relating to the application may in the manner specified in the notice and within fifteen clear days after the last of the publications required under paragraph (2) be lodged with the Authority.
- (2) A notice of application under paragraph (1) shall be in such form and contain such particulars as the Authority shall direct within

seven days of the receipt of the application, and shall be published in the *Gazette* and at intervals of not less than three days in two issues of a daily newspaper printed and circulating in the Island.

7. Where the Authority intends of its own motion to proceed to the fixing or review of the Tariff, it shall cause to be published in the *Gazette* and at intervals of not less than three days in two issues of a daily newspaper printed and circulating in the Island, notice of such intention stating that representations with respect to the Tariff may be lodged with the Authority within fifteen clear days after the last of the publications required by this rule and otherwise in the manner specified in the notice.

8. The Authority shall, not later than thirty days after the expiration of the time for lodging representations mentioned in the notice under rule 6 or rule 7, as the case may be, proceed to hold a public inquiry for the purpose of the fixing of the Tariff or the review thereof, as the case may be.

9. At any public inquiry the Authority shall hear—

- (a) the case presented on the part of the applicant (if any);
- (b) any case presented on the part of a person who has lodged with the Authority representations under rule 6 or rule 7, as the case may be,

and in its absolute discretion may hear—

- (c) any case presented on the part of a person appearing to the Authority to be interested in the matters to be dealt with at the inquiry; and
- (d) any other person likely in the opinion of the Authority to assist the Authority in its deliberations.

10. Any person exercising the right to a hearing, or allowed a hearing, pursuant to the provisions of rule 9, exclusive of paragraph (d) thereof, shall be entitled to be represented at a public inquiry by a barrister or by a solicitor or, in the case of a company incorporated under any statute for the time being in force in the Island regulating the incorporation of trading companies any officer or servant of the company duly authorized in writing either generally or specially in that behalf by the directors thereof.

11. As soon as may be after the conclusion of the public inquiry for the fixing or review of the Tariff under these Rules, the Authority shall furnish a report thereon to the Minister, and shall include in the report its decision with respect to the Tariff as well as a detailed statement of the reasons considered by the Authority to justify its decisions; and, within thirty days from the Minister's receipt of such report he may direct the Authority to revise its decision in the light of such restrictions, being restrictions on increases of wharfage rates in respect of such categories of goods mentioned in Schedule C, as are specified by the Minister.

Schedule C.

12. As soon as may be after the Authority's revision of its decision or, if no direction in that behalf is given by the Minister, within forty-five days after the Minister's receipt of the report under rule 11, the decision as revised (which shall not be contrary to the restrictions directed to be taken into account upon such revision) or, as the case may be, the reported decision (which shall stand in the event of revision thereof not having been directed under rule 11) shall be published by the Authority in the *Gazette*.

13. (1) The Tariff as fixed or altered pursuant to these Rules shall provide either the same wharfage rates applying to all the public wharves in the Island or different wharfage rates applying to public wharves in different parishes or groups of parishes of the Island.

(2) For the purposes of this rule, all wharves at the Harbour of Kingston shall be deemed to be in one parish.

14. Every decision published pursuant to rule 12 shall take effect upon such publication and, subject to the provisions of Part IV hereof, shall be final and conclusive.

15. The Authority shall prepare and keep full records of the proceedings at any public inquiry and shall after the conclusion of any public inquiry, upon application made in that behalf, furnish to any person who was heard at the inquiry, or to any other person if it thinks fit, upon payment in each case of a fee not exceeding five cents for every hundred words required to be copied, a copy of the whole or any part of the records thereof.

16. Subject to the provisions of this Part, the Authority may, in relation to any question of fixing or reviewing the Tariff, give such directions and regulate its procedure in such manner, as it may think fit.

PART III. Principles Underlying Tariff

17. (1) The Tariff shall secure to persons investing in public wharves of the Island generally a fair and reasonable return computed on the following basis, that is to say—

(a) the Authority shall—

(i) treat the operations of all Class I wharves in the Island as being notionally the operations of a single wharf (for this purpose consolidating the accounts of all the wharves of that class accordingly);

(ii) compute a fair and reasonable return to persons notionally investing in such single wharf; and

(iii) fix the Tariff accordingly;

(b) where at any time it is determined pursuant to rule 13 that different wharfage rates should apply in different parishes or groups of parishes in the Island the provisions of subparagraph (a) shall have effect as if reference therein to Class I wharves in the Island were a reference—

- (i) to Class I wharves in each such parish or group of parishes, as the case may be; or
 - (ii) where there is no Class I wharf in any such parish or group of parishes, to Class II wharves in that parish or group of parishes, as the case may be.
- (2) In pursuance of paragraph (1) the Authority shall—
 - (a) charge against revenue all charges which are properly to be made against revenue including in particular the following—
 - (i) operating and maintenance expenses;
 - (ii) taxes other than income tax and profits tax;
 - (iii) depreciation allowances in accordance with paragraph (3);
 - (iv) any other charges shown to the satisfaction of the Authority to be necessary and appropriate for the purpose of earning the revenue, including in the case of a public wharf operated by a limited liability company, interest charges, payments for the amortization of expenses (including discounts after allowing for any premiums) on the issue or retirement of shares or debentures;
 - (b) apportion non-recurring items over such number of years as the Authority may think reasonable;
 - (c) in the case of a limited liability company which is either engaged solely in the operation of a public wharf or engaged in the operation of a public wharf and in such other operations as may be approved by the Minister as being ancillary operations, make provision for the payment of dividends on preference shares and for fair and reasonable earnings on the equity capital in respect of the operation of the public wharf, the preference shares and equity capital relating to the wharf being ascertained, where necessary, in accordance with sub-paragraph (d);
 - (d) where any person is engaged in a single enterprise which consists of more than one of the following operations, namely—
 - (i) the operation of a Class I wharf;
 - (ii) the operation of a Class II wharf;
 - (iii) some other operation approved by the Minister under sub-paragraph (c),
 apportion the capital, charges and expenses of such enterprise between such respective operations in such manner as it thinks fit;
 - (e) calculate revenue and charges against revenue by reference to the operations of the public wharves in the Island as shown in the accounts of such wharves relating to the calendar year immediately preceding the year in which the Tariff is being fixed or reviewed, as the case may be, so, however, that

WHARFAGE

the Authority shall be entitled to make any adjustment to the said accounts which it is satisfied is required to reflect conditions which have affected or are likely to affect the operations of the wharves between the ending of the calendar year dealt with by such accounts and the expiration of the following calendar year:

Provided that where any wharf has become operational on a date subsequent to the commencement of the said calendar year it shall be the duty of the wharfinger to furnish to the Authority a statement, which may in so far as necessary include an estimate on the basis of the rates of wharfage for the time being in force, as to the operations of the wharf during the period of twelve months commencing on the said date; and revenue and charges against revenue in respect of any such wharf shall be calculated by reference to the operations shown by such statement as if it were accounts hereinbefore referred to, so, however, that the Authority shall not make any such adjustment as aforesaid to any such estimate but may make any changes which the Authority considers to be necessary for the purpose of making any estimate included therein a reasonable estimate.

(3) For the purposes of sub-paragraph (a) (iii) of paragraph (2) of this rule provision for depreciation shall be made by applying to the original cost of the wharf, as reduced from time to time by the value of retirements from such wharf as stated in the books of the wharfinger, such rates of depreciation as in the opinion of the Authority are fair and reasonable, and for this purpose in relation to the assets forming part of any wharf the Authority shall estimate the lives of such assets and allow depreciation in respect thereof at a constant annual rate over the lives as so estimated, and may take into account the adequacy of any accumulated provision for depreciation in respect of any such assets.

For the purposes of this paragraph and rule 18 "original cost" means the amount which the Authority is satisfied represents the actual cost of constructing and equipping the wharf, so, however, that where the wharf has been acquired by the wharfinger by purchase such cost shall be either—

- (a) the amount which the Authority is satisfied represents the actual cost to the wharfinger; or
- (b) the amount which it is satisfied represents the actual cost to the first person who owned the wharf after the 31st day of December, 1963,

whichever is less.

(4) In paragraph (2) of this rule—

- (a) “limited liability company” means any company limited by shares and incorporated under any statute for the time being in force in the Island regulating the incorporation of trading companies;
- (b) “equity capital” in relation to a limited liability company means the sum of—
 - (i) its issued share capital excluding preference shares and also excluding any part of the issued share capital arising from a revaluation or assets and the capitalization of a capital surplus arising therefrom; and
 - (ii) its reserves of whatever kind excluding any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability (which shall be deemed to include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities);
- (c) “earnings on equity capital” includes—
 - (i) dividends on issued share capital referred to in sub-paragraph (b) (i) of this paragraph; and
 - (ii) such reserves as in the opinion of the Authority are usual or proper to be made by undertakings of a like character;
- (d) in determining the reasonable earnings on the equity capital of limited liability companies operating public wharves regard shall be had to the earnings of companies which in the opinion of the Authority are comparable investor owned companies, whether incorporated in Jamaica or elsewhere, and with which such first-mentioned companies must compete for capital.

18. The accounts and any statement referred to in sub-paragraph (e) of paragraph (2) of rule 17 shall be maintained on an original cost basis within the meaning of paragraph (3) of rule 17, and subject as aforesaid shall be prepared in such form and contain such particulars and comply with such auditing requirements as the Authority may, after giving the wharfinger concerned an opportunity to make representations in that behalf, from time to time in writing direct.

19. (1) Save where the provisions of sub-paragraph (b) (ii) of paragraph (1) of rule 17 apply in fixing the Tariff, there shall in respect of each calendar year, be paid into the Tariff Fund by the wharfinger of every Class II wharf such sum as represents the amount by which the actual return on the operations of the wharf in the calendar year exceeds the sum computed by the Authority as a fair and reasonable return on those operations during that year, and for the purpose of such computation the Authority shall have regard to the provisions of paragraphs (2), (3) and (4) of rule 17.

(2) Any such sum as is referred to in paragraph (1) (hereinafter called the tariff levy) shall be paid in such manner and in accordance with such directions as the Authority may specify from time to time by a notice in writing to the wharfinger.

(3) Where a wharfinger fails to pay the tariff levy or any portion thereof, the amount outstanding may be recovered—

- (a) as a civil debt at the suit of the Authority summarily in a Resident Magistrate's Court; or
- (b) by the Authority in like manner as taxes, duties and arrears are recovered by the Collector of Taxes under sections 46 and 47 of the Tax Collection Act.

PART IV. *Appeals*

20. A decision of the Authority may, subject as hereinafter provided, be appealed from, within such time as may be prescribed by rules of court by any interested party to the proceedings at the public inquiry upon a question of law or on the ground that the decision was unreasonable in the light of the evidence adduced at such inquiry.

21. An appeal shall not operate as a stay of the decision of the Authority.

22. Upon an appeal the Court of Appeal may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
 - (i) in relation to a point of law give such directions as the Court thinks fit;
 - (ii) in any other case remit the matter to the Authority for rehearing generally or for such further proceedings by the Authority as the Court thinks fit,

and may award such costs as it thinks fit including any costs of the hearing before the Authority and may also make such further or other order as it may think just, including an order, in the case of any such remission, that the rates of wharfage shall, as from the date of the remission, be the rates in force immediately before the decision appealed from was published under rule 12 if in the opinion of the Court substantial injustice would be occasioned in the absence of such order; but, subject to the provisions of any such order as last mentioned, the Tariff as fixed or altered by any decision against which any appeal is brought, shall, in the event of a rehearing being ordered on such appeal, remain in force unless and until the Tariff is varied by any decision of the Authority upon such rehearing.

23. Subject to the provisions of this Part, the procedure upon appeal to the Court of Appeal under these Rules shall be such as may from time to time be prescribed by rules of court.

SCHEDULE C (Schedule A, rule 11)

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S. 14.

Rice
Baking and Counter Flour
Wheat
Cornmeal
Oats
Irish potatoes
Butter
Beef (Salted)
Pork (Salted)
Codfish, Mackerels
Matches
Lumber
Tallow
School books and school appliances
Textiles
Raw Cotton
Drugs and Pharmaceuticals