



# **Legal Counsel**

## **Customs & Excise**

**Understanding the Customs & Excise  
Transitional Provisions**



*South African Revenue Service*

# Understanding the Customs & Excise Transitional Provisions

## Preface

This guide has been prepared to assist persons and organisations in understanding the customs and excise transitional provisions brought about by the new customs and excise legislation consisting of the Customs Control Act, 2014, Customs Duty Act, 2014 and the Excise Duty Act, 1964, that will replace the Customs and Excise Act, 1964. It does not go into comprehensive technical and legal detail and should therefore not be used as a legal reference.

This guide has no binding legal effect.

Should you require more information you may –

- visit the SARS website at **[www.sars.gov.za](http://www.sars.gov.za)**;
- visit your nearest SARS branch office;
- contact your own tax advisor or tax practitioner;
- contact the SARS National Contact Centre –
  - if calling locally, on 0800 00 7277;
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time).

Comments on this guide may be sent to **[policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)**.

Prepared by

**Legal Counsel**  
**SOUTH AFRICAN REVENUE SERVICE**  
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## Glossary

In this guide unless the context indicates otherwise –

- “**1964 Act**” refers to the Customs and Excise Act 91 of 1964 as it reads immediately before the “effective date”;
- “**CCA**” refers to the Customs Control Act 31 of 2014;
- “**CDA**” refers to the Customs Duty Act 30 of 2014;
- “**EDA**” refers to the Excise Duty Act 91 of 1964 (in other words, the renamed Customs and Excise Act 91 of 1964 as it will read from the “effective date”); and
- “effective date” refers to that date as defined in section 926 of the CCA.

## 1. Introduction

As from a date to be determined by the President by proclamation, the so-called “effective date”, the new customs and excise legislation consisting of the CCA, CDA and EDA will replace the 1964 Act. Whilst the CCA and CDA are two new Acts of Parliament, the EDA will consist of the 1964 Act from which all the provisions relating to customs control and customs duty have been removed. The removal of the customs provisions from the 1964 Act will happen on the effective date when the Customs and Excise Amendment Act, 2014, becomes effective. As the provisions of the 1964 Act that will remain in the Act after the effective date will relate exclusively to excise and related matters, the 1964 Act will as from the effective date be renamed the “Excise Duty Act”. The EDA will eventually at a future date be replaced by a new, revamped Act on excise matters, but until that happens the existing excise provisions of the 1964 Act will continue to apply under the name “Excise Duty Act”.

The current Schedules 1 to 6 of the 1964 Act will, as from the effective date, be split into a Customs Tariff and an Excise Tariff. The Customs Tariff regulating customs duties will be attached as an addendum to the CDA and the Excise Tariff regulating excise duties, including fuel, Road Accident Fund (RAF) and environmental levies will be attached as an addendum to the EDA. The current Schedules of the 1964 Act will simultaneously be repealed.

The 1964 Act is currently informed by a set of rules published by the Commissioner under that Act. Under the new dispensation, these rules will be partially replaced by separate sets of rules under the CCA and CDA, respectively, dealing with matters regulated by these Acts. The current rules under the 1964 Act will therefore continue but only in relation to matters regulated by the EDA, namely, excise and related matters. These Rules will, as from the effective date, be renamed “Excise Rules”.

The transition from the current legal regime to the new legal regime poses significant challenges as the CCA and CDA go beyond a mere re-enactment of existing provisions of the 1964 Act and includes, for instance, alignment of South African law with international best practice and applicable international standards such as the Kyoto Convention. In order to facilitate a smooth and speedy transition, the CCA contains in Part 3 of Chapter 41 a set of technical provisions that will regulate the transition. The purpose of this guide is to explain how these transitional provisions will impact and guide the implementation of the current and new legislation.

## 2. Terminology (section 926)

As the transitional provisions contained in Part 3 of Chapter 41 consist of a set of technical provisions, the meaning of words and expressions used in this Part is crucial for a proper understanding of the transitional provisions. Some of these words and expressions are specifically defined in section 926, but note that words and expressions already defined in section 1 of the CCA will have the meaning as defined in that section despite the fact that these definitions are not repeated in section 926.

The definitions are generally self-explanatory, but in some instances there are subtle differences, such as the distinction between the 1964 Act and the EDA. Both refer to the Customs and Excise Act, 1964, but whereas the 1964 Act refers to the Act as it existed immediately **before** the effective date, the EDA refers to the Act as it will look like **as from** the effective date, the crucial difference being the amendments to be effected on the effective date to the Act by the Customs and Excise Amendment Act, 2014. The main purpose of this Amendment Act is to remove from the 1964 Act all the customs matters that will be dealt with in the CCA and CDA after the effective date. Therefore, references to the 1964 Act must be understood to indicate the un-amended version of the Act as it read immediately before the effective date and references to the EDA must be read as referring to the amended version of the Act as from the effective date.

The removal of customs-related provisions from the 1964 Act was an exceptionally difficult exercise because of the integrated and rather unsystematic manner in which that Act deals with customs and excise matters. The end result was an imperfect product as some of the provisions that will remain in the Act after the effective date may appear to still deal with customs matters, especially if read literally. A new section 1(6) was accordingly inserted in the EDA to provide definitional guidance as to how these ambiguous provisions must be interpreted in order to restrict their scope and application to excise matters only. Therefore, when reading the EDA one should be mindful that its provisions no longer apply to customs matters.

## 3. Which Act to be applied as from effective date (sections 927 and 929)

One of the key transitional provisions is section 927, which provides a “roadmap” for determining which Act will, as from the effective date, apply in relation to any specific goods, persons and matters. Basically section 927 states a default position when the CCA, CDA or EDA must be applied and then refers to certain exceptions to the default position listed in section 929(1) where the 1964 Act (the Act as it read before the effective date) must continue to apply after the effective date. In terms of the default position, the CCA, CDA or EDA will, as from the effective date, apply to all goods, persons and matters to which they will apply in terms of their respective provisions, that is, the –

- (a) CCA will apply to all goods, persons and matters that will be subject to customs control and that fall within the ambit of that Act under sections 28 and 29 of the CCA;
- (b) CDA will apply to all goods, persons and matters that are to be regulated by that Act for purposes of import and other customs duties as envisaged in section 2 of the CDA; and
- (c) EDA will apply to all goods, persons and matters that are to be regulated by that Act for purposes of excise tax, including fuel levy, RAF levy, environmental levy and air passenger tax.

As the EDA will not be a new Act but an existing Act that has been amended as from the effective date, it will not exactly “become applicable” on the effective date but rather without a break “continue to apply” to these goods, persons and matters.

These three bullets represent the default position as from the effective date, which will govern any goods, persons or matters in the customs and excise environment as from “day one” unless they fall within any of the excluded categories. The excluded categories where the default position will not apply relate mostly to goods and persons that entered the customs and excise environment before the effective date and that have not yet exited that environment as at the effective date. These excluded categories of goods and persons will not, as from the effective date, become subject to the CCA, CDA or EDA, but will continue to be regulated by the 1964 Act as if the CCA, CDA and Customs and Excise Amendment Act, 2014, have not been enacted. In other words, for the excluded categories of goods and persons it will be business as usual under the 1964 Act as if nothing has changed.

The excluded categories are –

- (i) goods which, immediately before the effective date, were subject to or being dealt with in terms of an **entry** under the 1964 Act;
- (ii) inbound travellers and crew who arrived in the Republic before the effective date;
- (iii) the accompanied and unaccompanied baggage of travellers and crew referred to in (ii); and
- (iv) international postal articles to which, and whilst, the 1964 Act continues to apply in terms of section 943.

The exclusions in (ii), (iii) and (iv) are self-explanatory. The 1964 Act will simply continue to apply to goods or persons falling within any of these categories as if nothing has changed. The exclusion in (i) is more problematic and here the 1964 Act will continue to apply only where the goods, at the effective date, are subject to or being dealt with in terms of an **entry** under the 1964 Act. (See definition of “enter” in section 926). This exclusion will therefore only come into play where goods caught up in the transition have, as at the effective date, **actually been entered** under the 1964 Act. **The time of arrival** of goods in the Republic is not a relevant factor for the continuation of the 1964 Act. The CCA will, for instance, apply to goods that have arrived before the effective date if not entered by the effective date, and the 1964 Act will, for instance, continue to apply to goods if entered before arrival in the Republic.

Whether goods have been entered as at the effective date under the 1964 Act is a factual question which is easily determinable in the import/export environment. The question is simply whether or not the goods have been entered as at that date. If not entered, the section 927(a) default position will trigger the CCA and, if entered, the section 929(1)(a) exception will trigger continuation of the 1964 Act. The CCA will, without exception, apply to **all goods not entered** under the 1964 Act by the effective date, including non-entered goods that have been detained or seized or that have been removed to a State warehouse before the effective date under the 1964 Act. This will also apply to goods such as means of transport and containers that are not required to be entered upon arrival in the Republic.

Section 927 is not confined to imported goods and goods to be exported, but applies also to locally manufactured goods in the excise environment. Here again, the crucial question is whether the manufactured goods have been entered under the 1964 Act before the effective date. If not entered, the EDA will apply and, if entered, the 1964 Act will continue to apply. The same principle will apply in relation to raw materials moved to excise manufacturing

warehouses for manufacturing purposes, although there is a twist here. Whereas under the 1964 Act imported goods must, as a general rule, be entered for home consumption or a procedure, this is not necessarily the case with local materials moved to and used for manufacturing purposes in an excise manufacturing warehouse. An entry is only required when the manufactured product is moved out of the warehouse in bond or for home consumption or export. To the extent then that local materials are, at the effective date, being used for manufacturing purposes in an excise manufacturing warehouse, those materials will, for purposes of section 927(c), be non-entered goods. This will invoke the default position referred to in section 927(c) and the EDA will, as from the effective date, apply to the manufacturing process. A transition to the EDA, as from the effective date, in relation to these materials would probably not cause any disruption as it would simply mean that the same provisions applicable to the materials before the effective date will continue to apply to them after the effective date.

Note that section 929(2) places a time limit on the transitional exclusion that goods entered under the 1964 Act before the effective date must continue to be dealt under the 1964 Act, as this section states that the 1964 Act will continue to apply to goods so excluded only for as long as those goods are subject to or being dealt with under that particular entry. If and when it becomes necessary to enter the excluded goods for another purpose or procedure, the 1964 Act will cease to apply to the goods and control over the goods will move over to the new legislative regime. Which particular regime will become applicable, will depend on the category in which the excluded goods fall as set out in section 929(3). This may look complicated but is in fact quite logical and easy to follow.

Section 929(3) distinguishes between five categories of excluded goods, each of which is explained separately below.

*(Note that the expression “locally manufactured excise goods” as used below refers to excisable, fuel levy, environmental levy and RAF levy goods manufactured in the Republic.)*

### **3.1 First category: The entered goods that are excluded are imported goods to be entered for home consumption [section 929(3)(a)]**

Section 929(3)(a) covers the scenario where imported goods entered before the effective date for a purpose or procedure provided for in the 1964 Act, say for warehousing, are to be moved out of the current entry (warehousing) into home consumption. As the 1964 Act upon completion of the current entry (warehousing) will, in terms of section 929(2), cease to apply, section 929(3)(a) states that, in order to move the goods into home consumption, the goods must be cleared for home use under the CCA. The net effect is that the CCA will become applicable to the goods upon clearance of the goods for home use. Such a clearance for home use will trigger application of the CDA and EDA in relation to the goods as imported goods if any taxes are payable on those imported goods upon clearance for home use. See section 929(4).

### **3.2 Second category: The entered goods that are excluded are imported goods or products (other than locally manufactured excise goods) derived from those imported goods and those goods or products are to be entered for a purpose which is a customs procedure under the Customs Control Act [section 929(3)(b)]**

Section 929(3)(b) covers the scenario where imported goods that were entered before the effective date for a purpose or procedure under the 1964 Act, including products derived under customs control from those goods, are to be entered after the effective date for another purpose or procedure that happens to be a customs procedure under the CCA. Section 929(3)(b) states that, in such a case, the 1964 Act will cease to apply, and the goods or products must be cleared under the CCA for the required customs procedure. For instance, if imported goods were entered under the 1964 Act before the effective date, for say inward processing under Tariff Item 470.00, any compensating products derived from those goods that must be exported after the effective date will have to be cleared for export under the CCA. The 1964 Act ceases to apply to the compensating products as from the date of clearance for export.

Note the following:

- Section 929(3)(b) will apply only if the purpose for which the goods or products are to be entered is a customs procedure under the CCA. If that is the case, the only option is a clearance for that procedure under the CCA, which will bring application of the 1964 Act in relation to those goods or products to an end.
- As the procedures and purposes for which imported goods can be cleared under the CCA is fairly exhaustive, it is unlikely that imported goods can be entered under the 1964 Act for a purpose that is not a clearance procedure under the CCA.
- Locally manufactured excise goods are excluded from section 929(3)(b) as these goods fall in a different category that demands a different regime as set out in section 929(3)(c), (d) and (e).

### **3.3 Third category: The entered goods that are excluded are locally manufactured excise goods to be entered for home consumption [section 929(3)(c)]**

Section 929(3)(c) covers the scenario where locally manufactured excise goods that have been entered before the effective date for a purpose or procedure provided for in the 1964 Act are to be moved out of the current entry into home consumption. As the 1964 Act upon completion of the current entry will, in terms of section 929(2), cease to apply, section 929(3)(c) states that the EDA (in other words, the amended provisions of the 1964 Act) will regulate the passage of the goods into home consumption.

Note the following:

- Section 929(2)(c) would typically apply where the raw materials used in the manufacture of excise goods were imported goods that were, before the effective date, entered under a rebate item in the Schedules to the 1964 Act or where excise goods were, before the effective date, entered for removal in bond from one excise warehouse to another. If these excise goods are to be moved into home consumption, the EDA will apply in terms of section 929(2)(c).
- The section 929(3)(c) scenario must be distinguished from the situation where excise goods are manufactured in an excise warehouse in circumstances where the goods were not subject to any entry before the effective date, for instance where locally



produced raw materials are used. In such a case the default position in section 927(c) will apply and the goods will be subject to the EDA **as from the effective date**. Any subsequent entry for home consumption at any time after the effective date would accordingly be under the EDA.

### **3.4 Fourth category: The entered goods that are excluded are locally manufactured excise goods to be entered for a purpose which is not a customs procedure under the Customs Control Act [section 929(3)(d)]**

Section 929(3)(d) covers the scenario where locally manufactured excise goods that have been entered before the effective date for a purpose or procedure provided for in the 1964 Act are to be entered for a purpose which is **not** a customs procedure under the CCA. As the 1964 Act upon completion of the current entry will, in terms of section 929(2), cease to apply, section 929(3)(d) states that the EDA (in other words, the amended provisions of the 1964 Act) will, upon entry for the new purpose, become applicable to the goods.

Note the following:

- The scope of section 929(3)(d) is very limited as the removal of goods from an excise warehouse for various purposes are extensively covered by customs procedures under the CCA, that is, for exports from an excise warehouse, the export procedure, for deliveries as stores to ships, the stores procedure, for deliveries to tax free shops, the tax free shop procedure etc.
- An entry under the EDA, where section 929(3)(d) will find application, is contained in section 18(1)(a) of the EDA, that is, removals in bond from an excise manufacturing warehouse to another excise manufacturing warehouse. In this case the CCA will not apply and the goods will have to be entered under the EDA for removal in bond to the other excise warehouse.
- Also note that section 18(1)(a) of the EDA provides for entries for removals in bond for “other purposes” as may be prescribed by rule, thus leaving the door open for an extended application of this section in future.

### **3.5 Fifth category: The entered goods that are excluded are locally manufactured excise goods to be entered for a purpose which is a customs procedure under the Customs Control Act [section 929(3)(e)]**

Section 929(3)(e) covers the scenario where locally manufactured excise goods that have been entered before the effective date for a purpose or procedure provided for in the 1964 Act are to be dealt with in a manner which is a CCA customs procedure. For instance, where goods manufactured in an excise manufacturing warehouse are to be exported or to be supplied as stores or to a tax free shop, the 1964 Act will, in terms of section 929(2), cease to apply and the goods will have to be cleared for the applicable CCA procedure. The CCA will apply to the goods as from the date of clearance.

Note the following:

- The s929(3)(e) scenario must be distinguished from the situation where locally manufactured excise goods are manufactured in an excise warehouse in circumstances where the goods were not subject to any entry before the effective date. In such a case the section 927(c) default will apply and the goods will be subject to the EDA as from the effective date. Any subsequent clearance of the goods for a procedure which is a customs procedure under the CCA, for instance a clearance for export or for supply as stores or to a tax free shop, would under sections 18A(4) and 20(4)(d) of the EDA be effected under the CCA.

The implementation of the principles set out in section 929(3) may be regulated by rules prescribed by the Commissioner under section 929(6). As these principles, read with the default position contained in section 927(a), (b) and (c), are intended to cover the spectrum of eventualities that may occur in relation to goods and persons caught up in the transition, there may not be a need for extensive additional rules. It is, however, always possible that unforeseen situations may arise that are not properly covered, and in such an event section 929(6) will enable the Commissioner to address shortcomings by way of rules without resorting to parliamentary legislation.

The following examples illustrate how the above principles will apply:

<b>Status of goods as from effective date</b>	<b>Provision stipulating legal regime applicable to the goods</b>	<b>Whether the 1964 Act continues after effective date and, if “yes”, as initial or final regime</b>	<b>If the 1964 Act continues as initial regime, when initial regime ends</b>	<b>Final legal regime to regulate the goods</b>	<b>When final legal regime begins</b>
<b>1.</b> Imported goods as at the effective date not yet entered under 1964 Act for home consumption or other purpose	Default position under s927	No	N/A	CCA for clearance of goods; CDA for import duty payable; and EDA for excise duty payable	As from effective date
<b>2.</b> Goods as at the effective date already entered for home consumption, whether consisting of imported goods or locally manufactured excise goods	s929(1)(a)	Yes, as final regime	N/A	1964 Act for all matters arising from entry for home consumption, such as collection of duty and refunds	As from effective date

Status of goods as from effective date	Provision stipulating legal regime applicable to the goods	Whether the 1964 Act continues after effective date and, if “yes”, as initial or final regime	If the 1964 Act continues as initial regime, when initial regime ends	Final legal regime to regulate the goods	When final legal regime begins
<p><b>3.</b> Goods as at the effective date already entered for export, whether consisting of imported goods, products manufactured under rebate from imported goods, locally manufactured excise goods or goods in free circulation</p>	<p>s929(1)(a)</p>	<p>Yes, as final regime</p>	<p>N/A</p>	<p>1964 Act for all matters arising from entry for export, such as proof of export.</p>	<p>As from effective date</p>
<p><b>4.</b> Imported goods entered as at the effective date for any purpose or procedure and which after the effective date are to be moved into home consumption</p>	<p>ss929(1)(a) and (3)(a)</p>	<p>Yes, but only as initial regime</p>	<p>Until the goods are cleared for home use under CCA</p>	<p>CCA and CDA</p>	<p>As from date of clearance for home use under CCA</p>

<b>Status of goods as from effective date</b>	<b>Provision stipulating legal regime applicable to the goods</b>	<b>Whether the 1964 Act continues after effective date and, if “yes”, as initial or final regime</b>	<b>If the 1964 Act continues as initial regime, when initial regime ends</b>	<b>Final legal regime to regulate the goods</b>	<b>When final legal regime begins</b>
5. Imported goods entered as at the effective date for any purpose or procedure and which after the effective date are to be entered for another purpose which is a CCA customs procedure	ss929(1)(a) and (3)(b)	Yes, but only as initial regime	Until the goods are cleared for a purpose which is a CCA customs procedure	CCA and CDA	As from date of clearance for CCA customs procedure
6. Locally manufactured products (excluding locally manufactured excise goods) produced from imported goods under rebate of duty	ss929(1)(a) and (3)(b)	Yes, but only as initial regime	Until those products are cleared for a purpose which is a CCA customs procedure, such as export	CCA and CDA	As from date of clearance for CCA customs procedure
7. Locally manufactured excise goods derived from imported goods to be moved into home consumption	ss929(1)(a) and (3)(c)	Yes, but only as initial regime	Until those locally manufactured excise goods are entered for home consumption	EDA	As from date of entry for home consumption

Status of goods as from effective date	Provision stipulating legal regime applicable to the goods	Whether the 1964 Act continues after effective date and, if “yes”, as initial or final regime	If the 1964 Act continues as initial regime, when initial regime ends	Final legal regime to regulate the goods	When final legal regime begins
8. Locally manufactured excise goods to be entered for a purpose which is not a CCA customs procedure, such as removal in bond	ss929(1)(a) and (3)(d)	Yes, but only as initial regime	Until those locally manufactured excise goods are entered for a further purpose or procedure which is not a CCA customs procedure	EDA	As from date of entry for that further purpose or procedure
9. Locally manufactured excise goods to be entered for a purpose which is a CCA customs procedure, such as export	ss929(1)(a) and (3)(e)	Yes, but only as initial regime	Until those locally manufactured excise goods are cleared for a purpose or procedure which is a CCA customs procedure	CCA	As from date of clearance for that customs procedure
10. Locally produced raw materials as at effective date in excise manufacturing warehouse for manufacturing purposes	s927(c)	No <sup>1</sup>	N/A	EDA	As from effective date

<sup>1</sup> Note that it does not really matter whether the 1964 Act or the EDA applies to these raw materials as the provisions are actually the same in either version.

Status of goods as from effective date	Provision stipulating legal regime applicable to the goods	Whether the 1964 Act continues after effective date and, if “yes”, as initial or final regime	If the 1964 Act continues as initial regime, when initial regime ends	Final legal regime to regulate the goods	When final legal regime begins
11.Imported raw materials entered as at the effective date for use in manufacturing process in excise manufacturing warehouse	s929(1)(a)	Yes, as final regime	N/A	1964 Act	As from effective date

Sections 927 and 929(1) to (6) regulate the transition from the old to the new regime and determine which of the 1964 Act or the CCA, CDA or EDA applies to goods already in the customs and excise environment as at the effective date. These provisions do not apply to interest calculation, as section 929(7) provides that a single system of interest calculation, as set out in that section, must be applied to all amounts outstanding as from the effective date, irrespective of which law must be applied to the goods under sections 927 and 929(1) to (6).

#### **4. Continuation of “measures” issued under the 1964 Act and in force immediately before effective date (section 928)**

Section 928 provides for the continuation after the effective date of any “measures” issued under the 1964 Act that were immediately before the effective date in force in relation to any goods, person or matter contemplated in section 927(a), (b) or (c). Such measures continue to be in force only if and insofar a measure of a corresponding kind can, in relation to those goods or that person or matter, be issued, granted, imposed or made after the effective date under the CCA, CDA or EDA. If there is no provision in the CCA, CDA or EDA that enables a specific “measure” that has been issued under the 1964 Act, the measure will come to an end on the effective date. Although the vast majority of measures authorised in the 1964 Act will be covered by the new legislation, section 928 may negatively affect certain measures such as the so-called “concessions” that were occasionally granted under the 1964 Act and for which, as a matter of policy, no provision was made in the new legislation.

The term “measure” is defined in section 926(1) and explained in section 926(2). Rules and other forms of subordinate legislation are excluded from the definition in section 926(1), whilst section 926(2) provides a list of what is included in the definition, namely –

- any directive, direction, ruling, determination, requirement, restriction or other stipulation;
- any registration, licence, accredited status, certification or other official recognition;
- any approval, permission, authorisation, exclusion, exemption, rebate, relief or other dispensation;

- any condition, qualification or limitation;
- any appointment or designation;
- any delegation; and
- any other act or decision not mentioned above that has a continuous legal effect.

Note that these measures must be something that favour or bind a specific person, be in force immediately before the effective date, have a continuous legal effect and be sanctioned by a provision of the 1964 Act for which there is a corresponding counterpart in the CCA, CDA or EDA. After the effective date these measures will be governed by the applicable provisions of the CCA, CDA or EDA and any amendment or withdrawal of a measure will, for instance, be effected in terms of the corresponding provision of the CCA, CDA or EDA.

Also note that section 928, providing for the continuation of these measures after the effective date, must be read subject to sections 931 to 939. In other words, sections 931 to 939 will prevail in the event of any inconsistency between section 928 and any of these other sections. Sections 931 to 939 deal with specific types of measures, such as registrations and licences, which require transitional treatment that differs from a mere continuation under section 928. Each of these is discussed separately below.

Section 930 is a provision similar to section 928, and provides for the continuation of “measures” specifically for goods and persons to which the 1964 Act will in terms of section 929(1) continue to apply, in other words for those goods and persons that are already in the customs and excise net as at the effective date. As the principles contained in section 930 are the same as those in section 928, this section does not warrant a separate discussion.

## 5. Continuation of existing customs and excise registrations (sections 931 and 932)

Section 931 deals with existing **customs** registrations whilst section 932 deals with existing **excise** registrations. Both these terms are defined in section 926.

An “**existing customs registration**” means a registration –

- issued under the 1964 Act before the effective date for a purpose set out in that Act to a person that must or may under sections 603 to 607 of the CCA be registered for a similar purpose; and
- that was in force immediately before the effective date.

An “**existing excise registration**” means a registration –

- issued under the 1964 Act before the effective date for the purposes of that Act to a person or in respect of any premises, property, plant or equipment or other matter; and
- that was in force immediately before the effective date,

but excludes any such registration that is an existing customs registration.

The two types of registration are treated differently in the transition.

## 5.1 Existing customs registrations

Existing customs registrations will in terms of section 931(1) lapse 30 days after the effective date unless the registration holder before the expiry of the 30-day period submits an application for a new registration to replace the existing one. Therefore, if no application is submitted within the 30 days, the existing registration will lapse at the expiry of the 30 days. However, if an application is submitted within the 30 days, the existing registration will continue as a “measure” under section 928(1) until the application for a new registration is dealt with by Customs and either granted or refused under Chapter 28 of the CCA. If the new registration is granted, it replaces the existing one, and if it is refused, the existing registration comes to an end as from the date the decision on the application comes into effect.

Nothing will prevent the holder of an existing registration from applying for a new registration before the effective date. Customs will be able to start with the registration process and finalise new registration applications before the effective date, leading to legal certainty for these registrants as from the commencement of the new legislation. For the purpose of considering and taking final decisions on applications before the effective date, the new legislation, including the new rules, will be deemed to be in full force and effect, but no decision taken on an application will have any legal effect before the effective date.

## 5.2 Existing excise registrations

Existing excise registrations will in terms of section 932 not be affected by the CCA and all such registrations will continue until the registration is replaced by a new registration or withdrawn or until it lapses under the EDA. In short, excise registrations will automatically continue after the effective date as registrations under the EDA.

## 6. Continuation of existing customs and excise licences (sections 933 and 934)

Section 933 deals with existing **customs** licences whilst section 934 deals with existing **excise** licences. Both these terms are defined in section 926.

An “**existing customs licence**” is defined as a licence –

- (a) issued under the 1964 Act before the effective date for a purpose set out in that Act to a person or in respect of any premises or facility required under sections 630 to 634 of the CCA to be licensed for a similar purpose; and
- (b) that was in force immediately before the effective date.

An “**existing excise licence**” is defined as a licence –

- (a) issued under the 1964 Act before the effective date for the purposes of that Act to a person or in respect of any premises, property, plant or equipment; and
- (b) that was in force immediately before the effective date,

but excludes any such licence that is an existing customs licence.

The two types of licences are treated differently in the transition.



## 6.1 Existing customs licences

Existing customs licences will in terms of section 933(1) lapse 30 days after the effective date unless the licensee before the expiry of the 30-day period submits an application for a new licence to replace the existing licence. Therefore, if no application is submitted within the 30 days, the existing licence will lapse at the expiry of the 30 days. However, if an application is submitted within the 30 days, the existing licence continues as a “measure” under section 928(1) until the application for a new licence is dealt with by Customs and either granted or refused under Chapter 29 of the CCA. If the new licence is granted, it replaces the existing one and if it is refused the existing licence comes to an end as from the date the decision on the application comes into effect.

Nothing will prevent an existing licensee from applying for a new licence before the effective date. Customs will be able to start with the licensing process and finalise new licence applications before the effective date, leading to legal certainty for these licensees as from the commencement of the new legislation. For the purpose of considering and taking final decisions on applications before the effective date, the new legislation, including the new rules, will be deemed to be in full force and effect, but no decision taken on an application will have any effect before the effective date.

In ordinary parlance one can say that a 1964 Act licence that continues in terms of section 933 after the effective date, will continue as if it is a CCA licence. Unless there are compelling reasons to the contrary, a licence that continues will generally confer all the rights and be subject to all the obligations attached to a CCA licence. But these rights and obligations should not be confused with the legal regime applicable to any specific goods in or on any licenced premises. For instance, warehoused goods to which the 1964 Act continues to apply, must be warehoused in accordance with that Act and not the CCA despite the fact that the 1964 Act warehouse licence continues as a licence under the CCA. The fact that the licence continues as if it is a CCA licence cannot alter the legal regime applicable to the goods in the warehouse. It cannot affect the tax status of the goods and it cannot affect processes that for instance regulate the alteration, repacking or temporary removal of the goods. In this regard section 929(1) is very clear where it says that the 1964 Act must continue in relation to affected goods “as fully and effectually” as if the CCA, CDA, and Customs and Excise Amendment Act, had not been enacted.

## 6.2 Existing excise licences

Existing excise licences will in terms of section 934 not be affected by the CCA and all such licences will continue until the licence is replaced by a new licence or withdrawn or until it lapses under the EDA. In short, excise licences will automatically continue after the effective date as licences under the EDA.

## 7. Continuation of accredited status granted under the 1964 Act (section 935)

Section 935 deals with the continuation after the effective date of accredited status granted to persons under the 1964 Act. The section draws a distinction between persons who at the effective date are holders of **customs** registrations or licences, and those who are holders of **excise** registrations or licences. In the case of accredited status granted to holders of customs registrations and licences, a further distinction is drawn between **the levels** of accreditation.

In terms of section 935(1)(a) all first level accreditations granted to persons that are holders of a **customs** registration or licence will lapse on the effective date. These holders of first level accreditation will have to apply afresh for accredited status under Chapter 30 of the CCA. The position for holders of **customs** registrations or licences that have second and third levels of accreditation are different and those accreditations will in terms of section 935(2) continue after the effective date as a “measure” under section 928 except that, as from that date, second level will become first level and third level will become second level. This implies that in future the CCA will only provide for these two levels of accreditation and that persons whose accreditation has lapsed on the effective date and who wish to apply for accreditation under the new regime, will have to apply for the new first level.

Accredited status granted to persons that are holders of **excise** registrations and licences are unaffected and their accreditations will in terms of section 935(1)(b) continue after the effective date as a “measure” under section 928 until replaced or terminated under the EDA.

## **8. Continuation of approvals given to right-holders for customs protection against counterfeit goods (section 936)**

Section 936 provides for the continuation after the effective date of certain approvals granted under the 1964 Act to right-holders for customs protection against counterfeit goods. These approvals will basically continue as a “measure” under section 928 provided the right-holder has paid the prescribed fees within 30 days from the effective date.

## **9. Continuation of security (section 937)**

Security given under the 1964 Act will in terms of section 937 continue to be available to the Commissioner for the payment of tax or other money covered by the security that may become payable after the effective date. The continued availability of the security after the effective date will not affect the Commissioner’s power to require additional security for the particular goods under the CCA.

## **10. Administrative and judicial proceedings (section 938)**

The enactment of the CCA, CDA, and Customs and Excise Amendment Act, 2014, will not affect the institution, continuation, completion and enforcement of any administrative, civil or criminal proceedings that arose under or in connection with the 1964 Act before the effective date. Note that section 938 must be read with section 12 of the Interpretation Act, 1957.

## **11. Investigations (section 939)**

The enactment of the CCA, CDA, and Customs and Excise Amendment Act, 2014, will in terms of section 939 also not affect the institution, continuation and completion of any investigation into any alleged contravention or breach of the 1964 Act committed before the effective date.

## **12. Commencement with certain actions before effective date**

In order to facilitate a smooth transition, it is envisaged that preparatory actions for the implementation of the new legislation will as far as possible have to be taken before the effective date. These actions include –

- the publication of rules provided for in the new legislation;
- the publication of a Customs Tariff and an Excise Tariff referred to in section 944(2) of the CCA;
- the formal establishment of customs offices for purposes of the new legislation, including determination of jurisdictional areas and functions for those customs offices;
- the designation of persons as customs officers for purposes of the new legislation and the issue of identity cards to those officers; and
- the delegation of powers and duties for purposes of the new legislation.

With regard to registration, licensing and the granting of deferment benefits for customs duty under the new Acts, Customs will start with these processes well before the effective date as this is bound to be a massive undertaking that cannot be delayed until the effective date.

## **13. Transitional rules (section 941)**

Section 942 enables the Commissioner to make rules to facilitate the transition and to address any unintended consequences that may arise. Under this section rules may be made –

- (a) to regulate the implementation of any of the transitional provisions, including any principles set out in section 929;
- (b) to regulate any transitional matter not provided or not adequately provided for in the transitional provisions if –
  - (i) the absence of such provision or of adequate provision may put the payment or collection of tax at risk; or
  - (ii) regulation of such matter is otherwise necessary for an orderly and effective transition; or
- (c) to address any unforeseen or unintended consequence, or any anomaly or incongruity, that may arise from the implementation or enforcement of a provision of the CCA, CDA or EDA.

Any rules made under section 942 will be additional to the transitional provisions in the CCA. At this stage it is unclear to what extent additional rules will be needed, as the transitional provisions in the CCA establish a set of guiding criteria that covers the spectrum of virtually all possible eventualities. As explained, the default position is that the CCA will automatically apply to all goods, persons and matters as from the effective date unless they fall within an excluded category referred to in section 929, such as goods already “entered” under the 1964 Act as at the effective date. As “entered” goods are regulated by rather complicated transitional provisions, it is quite possible that there may be areas that may need additional attention by way of transitional rules. Possible areas where additional rules may be needed are –

- (aa) arrangements to facilitate the registration/licensing/accreditation/deferment process before the effective date, such as the date from which applications may be submitted, roll-out of sufficient knowledge requirements etc;
- (bb) possible application of the CCA state warehouse regime to “entered” goods removed to a state warehouse;
- (cc) possible application of the CCA provisions on seizures/confiscations to “entered” goods seized under the 1964 Act; and
- (dd) possible application of the CCA provisions on abandonment and destruction of goods under customs supervision to “entered” goods.