



# Foreign Enlistment Act 1870

1870 CHAPTER 90 33 and 34 Vict

## *Legal Procedure*

**16 Jurisdiction in respect of offences by persons against Act.**

Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

**17 Venue in respect of offences by persons.**

Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

**18 Power to remove offenders for trial.**

The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant

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is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

## 19 Jurisdiction in respect of forfeiture of ships for offences against Act.

All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act shall require the sanction of the Secretary of State [<sup>F1</sup>or such chief executive authority as is in this Act mentioned], and shall be had in the Court of Admiralty, and not in any other court; and the Court of Admiralty shall, in addition to any power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

### Textual Amendments

**F1** Words repealed (N.I.) by [Statute Law Revision \(Northern Ireland\) Act 1976 \(c. 12\)](#), [Sch. Pt. IV](#)

## 20 Regulations as to proceedings against the offender and against the ship.

Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

## 21 Officers authorized to seize offending ships.

The following officers, that is to say,

- (1) Any officer of customs in the United Kingdom [<sup>F2</sup>(except in the Isle of Man)], subject nevertheless to any special or general instructions from the [<sup>F3</sup>Commissioners of Customs and Excise], or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade [<sup>F4</sup>and, in the Isle of Man, any officer of customs of the Isle of Man, or officer of the Isle of Man Harbour Board, subject nevertheless to any special or general instructions from the Governor in Council] ;
- (2) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;
- (3) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer;

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- (4) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from [<sup>F5</sup>the Defence Council] or his superior officer,

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the “local authority;” but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

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**Textual Amendments**

- F2** Words inserted by [S.I. 1980/399, Sch. Pt. I para. 1](#)  
**F3** Words substituted by virtue of S.R. & O. 1909/197 (Rev. V. p. 465: 1909, p. 239), art. 10  
**F4** Words added by [S.I. 1980/399, Sch. Pt. I para. 1](#)  
**F5** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)
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**Modifications etc. (not altering text)**

- C1** Functions of Board of Trade now exercisable concurrently by Secretary of State: [S.I. 1970/1537, art. 2](#)  
**C2** References to “the military service of the Crown” to be construed as including a reference to the air force service: S.R. & O. 1918/548 (Rev. I, p. 896: 1918 I, p. 50), art. I, Sch.

## 22 Powers of officers authorized to seize ships.

Any officer authorized to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty’s army or navy or marines, or any excise officers or officers of customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen’s Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

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**Modifications etc. (not altering text)**

- C3** References to “the army” to be construed as including references to the Air Force: S.R. & O. 1918/548 (Rev. I, p. 896: 1918 I, p. 50), art. I, Sch.

## 23 Special power of Secretary of State or chief executive authority to detain ship.

If the Secretary of State [<sup>F6</sup>or the chief executive authority] is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty’s dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State [<sup>F6</sup>or chief executive authority] shall have power to issue a warrant stating that there is reasonable and

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probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner herein-after mentioned.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State [F6 or chief executive authority].

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State [F6 or the chief executive authority] may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State [F6 or chief executive authority] that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State [F6 or chief executive authority] think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the Secretary of State [F6 or the chief executive authority], before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

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**Textual Amendments**

**F6** Words repealed (N.I.) by [Statute Law Revision \(Northern Ireland\) Act 1976 \(c. 12\)](#), [Sch. Pt. IV](#)

**24 Special power of local authority to detain ship.**

Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State [<sup>F7</sup>or chief executive authority].

Upon the receipt of such communication the Secretary of State [<sup>F7</sup>or chief executive authority] may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State [<sup>F7</sup>or chief executive authority] orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

**Textual Amendments**

**F7** Words repealed (N.I.) by [Statute Law Revision \(Northern Ireland\) Act 1976 \(c. 12\)](#), [Sch. Pt. IV](#)

**25 Power of Secretary of State or executive authority to grant search warrant.**

The Secretary of State [<sup>F8</sup>or the chief executive authority] may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

**Textual Amendments**

**F8** Words repealed (N.I.) by [Statute Law Revision \(Northern Ireland\) Act 1976 \(c. 12\)](#), [Sch. Pt. IV](#)

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## 26 Exercise of powers of Secretary of State or chief executive authority.

Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, [<sup>F9</sup>and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdictions; that is to say,]

- (1) . . . . . <sup>F10</sup>
- (2) In Jersey by the Lieutenant Governor:
- (3) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor:
- (4) In the Isle of Man by the [<sup>F11</sup>Governor in Council] :
- (5) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State . . . <sup>F12</sup>, the Channel Islands, or the Isle of Man shall be laid before Parliament.

### Textual Amendments

- F9** Words repealed (N.I.) by Statute Law Revision (Northern Ireland) Act 1976 (c. 12), **Sch. Pt. IV**
- F10** s. 26(1) repealed by S.I. 1973/2163, art. 14(2), **Sch. 6**
- F11** Words substituted by S.I. 1980/399, **Sch. Pt. I para. 2**
- F12** Words repealed by S.I. 1973/2163, art. 14(2), **Sch. 6**

## 27 Appeal from Court of Admiralty.

An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

## 28 Indemnity of officers.

Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

## 29 Indemnity to Secretary of State or chief executive authority.

The Secretary of State shall not, [<sup>F13</sup>nor shall the chief executive authority], be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

### Textual Amendments

- F13** Words repealed (N.I.) by Statute Law Revision (Northern Ireland) Act 1976 (c. 12), **Sch. Pt. IV**

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