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STATUTORY INSTRUMENTS

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**2001 No. 396**

**The Afghanistan (United Nations Sanctions) Order 2001**

*GENERAL*

**Customs powers to demand evidence of destination which goods reach**

16. Any exporter or any shipper of goods which have been exported from the United Kingdom shall, if so required by the Commissioners of Customs and Excise, furnish within such time as they may allow proof to their satisfaction that the goods have reached either—

- (a) a destination to which they were authorised to be exported by a licence granted under this Order; or
- (b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

**Offences in connection with application for licences, conditions attaching to licences, etc.**

17.—(1) If for the purposes of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Secretary of State or the Treasury under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Secretary of State or the Treasury after the doing of the act authorised by the licence.

**Declaration as to goods: powers of search**

18.—(1) Any person who is about to leave the United Kingdom shall, if he is required to do so by an officer of the Customs and Excise—

- (a) declare whether or not he has with him any restricted goods which are destined for Afghanistan or for delivery, directly or indirectly, to or to the order of any person in Afghanistan; and
- (b) produce any such goods as aforesaid which he has with him.

Any such officer, and any person acting under his directions, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

**18.—(2)** Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under this Order.

### **Investigation, etc. of suspected ships**

**19.—(1)** Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph 1 of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b) above), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2) below.

(2) The further action referred to in paragraph (1)(c) of this article is either—

- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
- (b) to request the master of the ship to take any one or more of the following steps—
  - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
  - (ii) if the ship is then in port in the United Kingdom, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
  - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii) above; and
  - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 22(3), where—

- (a) a master refuses or fails to comply with a request made under paragraph (2)(b) of this article, or
- (b) an authorised officer otherwise has reason to suspect that a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) In this article “authorised officer” means any officer as is referred to in section 284(1) of the Merchant Shipping Act 1995.

### **Investigation, etc. of suspected aircraft**

**20.**—(1) Where any authorised officer or authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force; and
- (c) if the aircraft is then in the United Kingdom any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (a) above) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the United Kingdom until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 22(3), where an authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) of this article may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article—

“authorised officer” means any officer of Customs and Excise;

“authorised person” means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

### **Investigation, etc. of suspected vehicles**

**21.**—(1) Where any authorised officer or authorised person has reason to suspect that any vehicle in the United Kingdom has been or is being or is about to be used in contravention of article 6—

- (a) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force; and
- (c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (a) above) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the United Kingdom until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 22(3), where any authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) of this article may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article—

“authorised officer” means any officer of Customs and Excise;

“authorised person” means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

#### **Provisions supplementary to articles 19 to 21**

**22.**—(1) No information furnished or document produced by any person in pursuance of a request made under article 19, 20 or 21 shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or the possession of that document in his own right;

- (b) to any person who would have been empowered under article 19, 20 or 21 to request that it be furnished or produced to any person holding or acting in any office under or in the service of—
  - (i) the Crown in respect of the Government of the United Kingdom;
  - (ii) the Government of the Isle of Man;
  - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
  - (iv) the States of Jersey; or
  - (v) the Government of any territory listed in Schedule 2 to this Order;
- (c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government or in securing compliance with or detecting evasion of measures in relation to Afghanistan decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
  - (i) in the United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, or for an offence under any enactment relating to customs; or
  - (ii) for any offence under any law making provision with respect to such matters that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 2 to this Order.

(2) Any power conferred by article 19, 20 or 21 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say—

- (a) a master of a ship who disobeys any direction given under article 19(2)(a);
- (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who—
  - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 19, 20 or 21 by any person empowered to make it, or
  - (ii) furnishes any document or information which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
- (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any person (or any person acting under the authority of any such person) in the exercise of his powers under article 19, 20 or 21.

(4) Nothing in articles 19 to 22 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

### **Obtaining of evidence and information**

**23.** The provisions of Schedule 3 to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State, the Treasury or the Commissioners of Customs and Excise—

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of—
  - (i) this Order in the United Kingdom; or
  - (ii) any law making provision with respect to any of the matters regulated by this Order that is in force in any of the Channel Islands or the Isle of Man or any territory listed in Schedule 2 to this Order; and
- (b) of evidence of the commission of—
  - (i) in the United Kingdom, an offence under this Order or, with respect to any of the matters regulated by this Order, of an offence relating to customs; or,
  - (ii) with respect to any of those matters, of an offence under the law of the Channel Islands or the Isle of Man or any territory listed in Schedule 2 to this Order.

### **Investigations by the Commissioners of Customs and Excise**

**24.** Where the Commissioners of Customs and Excise investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under this Order has been committed, or
- (b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979.

## Penalties and Proceedings

**25.**—(1) Any person guilty of an offence under article 3, 5, 6(3), 7, 8, 9(8), 10, 14 or 15 shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) Any person guilty of an offence under article 12 or 13 or article 22(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 3 to this Order shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) Any person guilty of an offence under article 17(1) or (2) or article 18(3) shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to a fine not exceeding the statutory maximum.

(4) Any person guilty of an offence under article 22(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Any person guilty of an offence under article 9(9) or 11 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(6) Any person guilty of an offence under article 16 or 18(2) of this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(8) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980<sup>(1)</sup>, a summary offence under this Order may be tried by a magistrates' court in England and Wales if any information is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(9) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup>, summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge; and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section:

Provided that such proceedings shall not be commenced after the expiration of 3 years from the commission of the offence.

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(1) 1980 c. 43.

(2) 1995 c. 46.

(10) Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(3)</sup>, summary proceedings in Northern Ireland for an offence under this Order may be instituted at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(11) For the purposes of this article:

- (a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate (as the case may be) as to the date on which such evidence as is referred to in paragraphs (8), (9) and (10) above came to his knowledge shall be conclusive evidence of that fact; and
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(12) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(13) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984<sup>(4)</sup> shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(14) In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under this Order, he may arrest that person without a warrant.

(15) In Northern Ireland, paragraph (2) of article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(5)</sup> shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that paragraph; and accordingly such offences shall be arrestable offences within the meaning of that Order.

(16) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted in England, Wales or Northern Ireland except by the Secretary of State or the Treasury or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

### **Exercise of powers of the Secretary of State and the Treasury**

**26.**—(1) The Secretary of State and the Treasury may to such extent and subject to such restrictions and conditions as he or they may think proper, delegate or authorise the delegation of any of his or their powers under this Order to any person, or class or description of persons, approved by him or them, and references in this Order to the Secretary of State or the Treasury shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

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(3) S.I.1981/1675 (N.I. 26).

(4) S.I. 1984/1341 (N.I. 12).

(5) S.I. 1989/1341 (N.I. 12).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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**Publication of matters designated by the Sanctions Committee**

27. The particulars of any designation by the Sanctions Committee referred to in this Order shall be published by the Secretary of State or the Treasury in the London, Edinburgh and Belfast Gazettes.