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STATUTORY INSTRUMENTS

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**2020 No. 948**

**The Afghanistan (Sanctions) (EU Exit) Regulations 2020**

**PART 7**

**Enforcement**

**Penalties for offences**

**38.**—(1) A person who commits an offence under any provision of Part 3 (Finance) or regulation 29 (finance: licensing offences), is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

(2) A person who commits an offence under any provision of Part 4 (Trade) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

(3) A person who commits an offence under regulation 30(6) or 34 (information offences in connection with Part 3) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 6 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(4) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003(1) comes into force, the reference in each of paragraphs (1)(a) and (2)(a) to 12 months is to be read as a reference to 6 months.

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(1) 2003 c.44. Amendments have been made to section 154(1), but none are relevant to these Regulations.

**Liability of officers of bodies corporate etc.**

**39.**—(1) Where an offence under these Regulations, committed by a body corporate,—

- (a) is committed with the consent or connivance 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, or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Paragraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

- (a) in the case of a partnership, to a partner;
- (b) in the case of an unincorporated body other than a partnership—
  - (i) where the body’s affairs are managed by its members, to a member of the body;
  - (ii) in any other case, to a member of the governing body.

(4) Section 171(4) of CEMA (which is a provision similar to this regulation) does not apply to any offence under these Regulations to which that provision would, in the absence of this paragraph, apply.

**Jurisdiction to try offences**

**40.**—(1) Where an offence under Part 3 (Finance), regulation 29 (finance: licensing offences) or regulation 30(6) or 34 (information offences in connection with Part 3) is committed in the United Kingdom—

- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(2) Where an offence under these Regulations is committed outside the United Kingdom—

- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(3) In the application of paragraph (2) to Scotland, any such proceedings against a person may be taken—

- (a) in any sheriff court district in which the person is apprehended or is in custody, or
- (b) in such sheriff court district as the Lord Advocate may determine.

(4) In paragraph (3) “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act)(2).

**Procedure for offences by unincorporated bodies**

**41.**—(1) Paragraphs (2) and (3) apply if it is alleged that an offence under these Regulations has been committed by an unincorporated body (as opposed to by a member of the body).

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(2) 1995 c.46.

(2) Proceedings in England and Wales or Northern Ireland for such an offence must be brought against the body in its own name.

(3) For the purposes of proceedings for such an offence brought against an unincorporated body—

(a) rules of court relating to the service of documents have effect as if the body were a body corporate;

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925(3) and Schedule 3 to the Magistrates' Courts Act 1980(4);

(ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945(5) and Article 166 of, and Schedule 4 to, the Magistrates' Courts (Northern Ireland) Order 1981(6).

(4) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations is to be paid out of the funds of the body.

### **Time limit for proceedings for summary offences**

**42.**—(1) Proceedings for an offence under these Regulations which is triable only summarily may be brought within the period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the prosecutor's knowledge.

(2) But such proceedings may not be brought by virtue of paragraph (1) more than 3 years after the commission of the offence.

(3) A certificate signed by the prosecutor as to the date on which the evidence in question came to the prosecutor's knowledge is conclusive evidence of the date on which it did so; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(4) In relation to proceedings in Scotland—

(a) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) applies for the purposes of this regulation as it applies for the purposes of that section, and

(b) references in this regulation to the prosecutor are to be treated as references to the Lord Advocate.

### **Trade enforcement: application of CEMA**

**43.**—(1) Where the Commissioners investigate or propose to investigate any matter with a view to determining—

(a) whether there are grounds for believing that a relevant offence has been committed, or

(b) whether a person should be prosecuted for such an offence,

the matter is to be treated as an assigned matter.

(2) In paragraph (1) "assigned matter" has the meaning given by section 1(1) of CEMA(7).

(3) In this regulation a "relevant offence" means an offence under Part 4 (Trade).

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(3) 1925 c.86. Section 33 was amended by the Statute Law (Repeals) Act 2004 (c.14), section 1(1) and Schedule 1, Part 17. Other amendments have been made to section 33 that are not relevant to these Regulations.

(4) 1980 c.43. Amendments have been made to Schedule 3 that are not relevant to these Regulations.

(5) 1945 c. 15 (N.I.).

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

(7) The definition of "assigned matter" in section 1(1) of CEMA was amended by the Commissioners for Revenue and Customs Act 2005 (c.11), Schedule 4, paragraph 22(a); the Scotland Act 2012 (c.11), section 24(7); and the Wales Act 2014 (c.29), section 7(1).

(4) Section 138 of CEMA(8) (arrest of persons) applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, a relevant offence as it applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence for which the person is liable to be arrested under the customs and excise Acts(9), but as if—

- (a) any reference to an offence under, or for which a person is liable to be arrested under, the customs and excise Acts were to a relevant offence;
- (b) in subsection (2), the reference to any person so liable were to a person who has committed, or whom there are reasonable grounds to suspect of having committed, a relevant offence.

(5) The provisions of CEMA mentioned in paragraph (6) apply in relation to proceedings for a relevant offence as they apply in relation to proceedings for an offence under the customs and excise Acts, but as if—

- (a) any reference to the customs and excise Acts were to any of the provisions referred to in paragraph (3);
- (b) in section 145(6), the reference to an offence for which a person is liable to be arrested under the customs and excise Acts were to a relevant offence;
- (c) in section 151, the reference to any penalty imposed under the customs and excise Acts were to any penalty imposed under these Regulations in relation to a relevant offence;
- (d) in section 154(2)—
  - (i) the reference to proceedings relating to customs or excise were to proceedings under any of the provisions mentioned in paragraph (3), and
  - (ii) the reference to the place from which any goods have been brought included a reference to the place to which goods have been exported, supplied or delivered or the place to or from which technology has been transferred.

(6) The provisions of CEMA are sections 145, 146, 147, 148(1), 150, 151, 152, 154 and 155(10) (legal proceedings).

#### **Trade offences in CEMA: modification of penalty**

44.—(1) Paragraph (2) applies where a person is guilty of an offence under section 68(2) of CEMA in connection with the prohibition mentioned in regulation 15(1) (export of military goods).

(2) Where this paragraph applies, the reference to 7 years in section 68(3)(b) of CEMA(11) is to be read as a reference to 10 years.

(3) Paragraph (4) applies where a person is guilty of an offence under section 170(2) of CEMA in connection with the prohibition mentioned in regulation 15(1) (export of military goods).

(4) Where this paragraph applies, the reference to 7 years in section 170(3)(b) of CEMA(12) is to be read as a reference to 10 years.

(8) Section 138 of CEMA was amended by the Police and Criminal Evidence Act 1984 (c.60), section 114(1), Schedule 6, paragraph 37 and Schedule 7, Part 1; the Finance Act 1988 (c.39), section 11; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 7, paragraph 54; S.I. 1989/1341 (N.I.12); and S.I. 2007/288.

(9) “The customs and excise Acts” is defined in section 1 of CEMA.

(10) Section 145 of CEMA was amended by the Police and Criminal Evidence Act 1984, section 114(1); the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 23(a); and S.I. 2014/834. Section 147 was amended by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 176; the Criminal Justice Act 1982 (c. 48), section 77, Schedule 14, paragraph 42; the Finance Act 1989 (c. 26), section 16(2); and the Criminal Justice Act 2003 (c. 44), section 41, Schedule 3, paragraph 50. Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 50, Schedule 4, paragraph 26, and section 52, Schedule 5. Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, section 50, Schedule 4, paragraph 27, and section 52, Schedule 5.

(11) The words “7 years” were inserted in section 68(3)(b) of CEMA by the Finance Act 1988, section 12.

(12) The words “7 years” were inserted in section 170(3)(b) of CEMA by the Finance Act 1988, section 12.

### **Application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005**

**45.** Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (investigatory powers)(**13**) applies to any offence under Part 3 (Finance) or regulation 29 (finance: licensing offences).

### **Monetary penalties**

**46.** The following provisions are to be regarded as not being financial sanctions legislation for the purposes of Part 8 of the Policing and Crime Act 2017(**14**)—

- (a) regulation 17(1) (making military goods and military technology available);
- (b) regulation 18(1) (transfer of military technology);
- (c) regulation 20(1) and (2) (financial services and funds relating to military goods and military technology);
- (d) regulation 21(f)(i) and (g) (brokering services relating to financial services and funds relating to military goods and military technology);
- (e) regulation 22(1) (enabling or facilitating conduct of armed hostilities).

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**(13)** [2005 c.15](#). Chapter 1 of Part 2 has been amended by the Terrorism Act [2006 \(c.11\)](#), section 33(3) and (4); the Northern Ireland (Miscellaneous Provisions) Act [2006 \(c.33\)](#), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act [2010 \(c.23\)](#), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 (asp.13), section 203 and Schedule 7, paragraph 77; the Crime and Courts Act [2013 \(c.22\)](#), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act [2017 \(c.22\)](#), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; and [S.I. 2014/834](#).

**(14)** See section 143(4)(f) and (4A), as inserted by the Sanctions and Anti-Money Laundering Act 2018, Schedule 3, paragraph 8(1) and (3).