
STATUTORY INSTRUMENTS

1993 No. 1188

The Serbia and Montenegro (United Nations Sanctions) Order 1993

Citation, commencement, operation and extent

1.—(1) This Order may be cited as the Serbia and Montenegro (United Nations Sanctions) Order 1993 and shall come into force on 1st May 1993.

(2) If, after the making of this Order, the Security Council of the United Nations takes a decision which has the effect of cancelling or suspending the operation of the resolution adopted by it on 17th April 1993, this Order shall cease to have effect or its operation shall be suspended, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) This Order shall extend to the United Kingdom.

Interpretation

2.—(1) In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

“airport” has the meaning it bears in section 82 of the Airports Act 1986(1);

“airport charges” and “aircraft documents” have the meanings they bear in section 88 of the Civil Aviation Act 1982(2);

“body corporate” includes a Scottish partnership and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“cargo” includes load;

“effective control” in relation to a ship, goods vehicle or aircraft, means a legal or beneficial interest by way of ownership which is less than a majority interest but which, having regard to the considerations of fact or law involved, confers the possibility of directly or indirectly exercising a decisive influence on the operation of that ship, goods vehicle or aircraft;

“goods vehicle” has the meaning it bears in section 192(1) of the Road Traffic Act 1988(3);

“harbour” and “harbour authority” have the meanings they bear in the Harbours Act 1964(4) and the Harbours Act (Northern Ireland) 1970(5);

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of that ship;

(1) 1986 c. 31.
(2) 1982 c. 16.
(3) 1988 c. 52.
(4) 1964 c. 40.
(5) 1970 c. 1 (N.I.).

“operator”, in relation to a ship, aircraft or goods vehicle, means the person for the time being having the management of that ship, aircraft or goods vehicle;

“owner”, in relation to a goods vehicle which is the subject of a hiring agreement or a hire purchase agreement, has the meaning it bears in section 192(1) of the Road Traffic Act 1988;

“owner”, in relation to a ship, means, except in relation to articles 10, 12 and 17, where the owner of a ship is not the operator, the operator and any person to whom it is chartered;

“person connected with Serbia or Montenegro” means

- (a) the Governments of the Federal Republic of Yugoslavia, of Serbia and of Montenegro;
- (b) any other person in, or resident in, Serbia or Montenegro;
- (c) any body incorporated or constituted under the law of Serbia or Montenegro;
- (d) any body, wherever incorporated or constituted, which is controlled by any of the said Governments, any other person in, or resident in, Serbia or Montenegro, or any body incorporated in or constituted under the law of Serbia or Montenegro; and
- (e) any person acting on behalf of any of the above mentioned persons;

“ship” has the meaning it bears in section 742 of the Merchant Shipping Act 1894⁽⁶⁾;

“stores” means goods for use in a ship, goods vehicle or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, and, in relation to a ship or aircraft, includes any goods for use as merchandise for sale by retail to persons carried therein;

“the 1992 Order” means the Serbia and Montenegro (United Nations Sanctions) Order 1992⁽⁷⁾;

“traffic area” means a traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981⁽⁸⁾;

“vehicle documents” means documents within the meaning of section 173(2) of the Road Traffic Act 1988;

“violation of the United Nations resolutions” means a contravention committed after the entry into force of this Order of any of those provisions of the law of any country or territory which, to the extent required by the provisions of the resolutions set out in Schedule 1 to this Order, prohibit certain imports and exports of goods, supplies of services, or operation or use of ships, goods vehicles or aircraft in relation to the former Yugoslavia or parts thereof, or, where there is no such law in the relevant country or territory, an import or export of goods, supply of services or operation or use of ships, vehicles or aircraft which is required to be prohibited under any of those resolutions.

Investigation of suspected ships, goods vehicles or aircraft

3.—(1) Where any authorised officer, that is to say, any such officer as is referred to in section 692(1) of the Merchant Shipping Act 1894, has reason to suspect that any ship in the United Kingdom has been or is being operated or used in violation of the United Nations resolutions, he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, 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 an authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request) may, in the case of a ship that is reasonably suspected of being operated or used in violation of the United Nations resolutions, exercise the following further powers with a view to the prevention of the commission

(6) 1894 c. 60.

(7) S.I.1992/1302.

(8) 1981 c. 14.

(or the continued commission) of any such violation or in order that enquiries into the matter may be pursued, that is to say, he may either direct the master 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 request the master to take any one or more of the following steps:

- (a) 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 any authorised officer that the ship may so proceed;
- (b) if the ship is then in a 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;
- (c) 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 (b) above; and
- (d) to take her to any other destination that may be specified by the officer in agreement with the master;

and the master shall comply with any such request or direction.

(2) Without prejudice to the provisions of paragraph (10) of this article, where a master refuses or fails to comply with a request made under this article that his ship shall or shall not proceed to or from any place or where an authorised officer otherwise has reason to suspect that such 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.

(3) Where any officer of Customs and Excise or any person authorised by the Secretary of State for that purpose either generally or in a particular case has reason to suspect that any goods vehicle in the United Kingdom has been or is being used in violation of the United Nations resolutions, that authorised person or officer may request the driver of the vehicle to furnish such information relating to the vehicle and its cargo and produce for his inspection such documents so relating and such cargo as he may specify, and that authorised person or that officer may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and its cargo and, for that purpose, may use or authorise the use of reasonable force; and any such authorised person or any such officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request) may further request the driver to cause the vehicle and its cargo to remain in the United Kingdom unless and until notified that the vehicle and its cargo may depart, and the driver shall comply with any such request.

(4) Without prejudice to the provisions of paragraph (10) of this article, where any person authorised as aforesaid or any such officer as aforesaid has reason to suspect that any request that a goods vehicle should remain in the United Kingdom that has been made under paragraph (3) of this article may not be complied with, that authorised person or that 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—

- (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 its cargo; and
- (c) use, or authorise the use of, reasonable force.

(5) Where any officer of Customs and Excise or any person authorised by the Secretary of State for that purpose either generally or in a particular case has reason to suspect that any aircraft in the United Kingdom has been or is being used in violation of the United Nations resolutions, that authorised person or officer 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, and that authorised person or that officer may (either alone or accompanied and assisted by persons under his authority) board

the aircraft and search it and its cargo and, for that purpose, may use or authorise the use of reasonable force; and any such authorised person or any such officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request) may further request the charterer, operator and the commander or any of them to cause the aircraft and its cargo to remain in the United Kingdom unless and until notified that the aircraft and its cargo may depart, and the charterer, the operator and the commander shall comply with any such request.

(6) Without prejudice to the provisions of paragraph (10) of this article, where any person authorised as aforesaid or any such officer as aforesaid has reason to suspect that any request that an aircraft should remain in the United Kingdom that has been made under paragraph (5) of this article may not be complied with, that authorised person or that 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—

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

(7) A person authorised by the Secretary of State to exercise any power for the purposes of paragraph (3), (4), (5) or (6) of this article shall, if requested to do so, produce evidence of his authority before exercising that power.

(8) No information furnished or document produced by any person in pursuance of a request made under this article 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 sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under this article to request that it be furnished or produced or to any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom;
- (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 in securing compliance with or detecting evasion of measures in relation to Serbia and Montenegro 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 for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence under any enactment relating to customs.

(9) Any power conferred by this article to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the 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.

(10) 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 paragraph (1) of this article with respect to the landing of any cargo;
- (b) a master of a ship, an operator of a goods vehicle, or a charterer or an operator or a commander of an aircraft who—

- (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under this article by any person empowered to make it, or
- (ii) wilfully furnishes false information or produces false documents to such a person in response to such a request;
- (c) a master or a member of a crew of a ship, an operator of a goods vehicle, or a charterer or an operator or a commander or a member of a crew of an aircraft who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under this article.

(11) Nothing in this article 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, goods vehicles or aircraft.

Impounding of ships

4.—(1) It shall be the duty of a harbour authority to take all such steps as may be necessary to secure that any ship to which this article applies and which is at its harbour shall be impounded.

(2) Without prejudice to the generality of paragraph (1) of this article, such steps may include:—

- (a) requesting the master or operator of the ship to move it, or to secure that it is moved, to another part of the harbour, and
- (b) moving the ship to another place.

(3) Any person who, without reasonable excuse—

- (a) obstructs a harbour authority, its servants or agents acting in accordance with the provisions of this article; or
- (b) refuses or fails within a reasonable time to comply with a request made by any such persons made in accordance with paragraph (2) of this article;

shall be guilty of an offence under this Order.

(4) Subject to paragraph (2)(b) of this article, if any ship which has been impounded under this article proceeds to sea before it is released by the harbour authority, the master of the ship and any other person who knowingly sends the ship to sea shall each be guilty of an offence.

(5) Nothing in this article shall preclude the harbour authority levying—

- (a) ship, passenger and goods dues (within the meaning of the Harbours Act 1964⁽⁹⁾); or
- (b) other charges which may be made by them in the exercise of their powers and duties.

(6) The harbour authority may recover impounding expenses from the owner of an impounded ship.

(7) This article applies to any ship—

- (a) which the harbour authority has reason to believe is either majority owned or effectively controlled by a person connected with Serbia or Montenegro, or
- (b) in respect of which a request has been made under article 3(1)(a), (b), (c) or (d), and in respect of which the Secretary of State determines that the said ship has been operated or used in violation of the United Nations resolutions.

(8) A certificate given by or on behalf of the Secretary of State stating that it has been determined that a ship has been operated or used in violation of the United Nations resolutions shall be conclusive evidence of that matter.

(9) 1964 c. 40.

Impounding of goods vehicles

5.—(1) It shall be the duty of the traffic commissioner for any traffic area in Great Britain to take all such steps as may be necessary to secure that any goods vehicle to which this article applies and which is within his traffic area shall be impounded.

(2) It shall be the duty of the Department of the Environment for Northern Ireland to take all such steps as may be necessary to secure that any goods vehicle to which this article applies and which is within Northern Ireland shall be impounded.

(3) Any person who, without reasonable excuse, obstructs a traffic commissioner or the Department, as the case may be, or their servants or agents, acting in accordance with the provisions of this article, shall be guilty of an offence under this Order.

(4) The traffic commissioner or the Department, as the case may be, may recover impounding expenses from the owner of an impounded goods vehicle.

(5) This article applies to any goods vehicle—

- (a) which the traffic commissioner or the Department, as the case may be, has reason to believe is either majority owned or effectively controlled by a person connected with Serbia or Montenegro, or
- (b) which is detained by virtue of article 3 and in respect of which the Secretary of State determines that the said goods vehicle has been used in violation of the United Nations resolutions.

(6) A certificate given by or on behalf of the Secretary of State stating that it has been determined that a goods vehicle has been used in violation of the United Nations resolutions shall be conclusive evidence of that matter.

Impounding of aircraft

6.—(1) It shall be the duty of an airport operator to take all such steps as may be necessary to secure that any aircraft to which this article applies and which is at his airport shall be impounded at that airport.

(2) Without prejudice to the generality of paragraph (1) of this article, such steps may include—

- (a) requesting the commander or operator of the aircraft to move it, or to secure that it is moved, to another part of the airport, and
- (b) the placing of obstacles in the path of a parked aircraft to prevent it from leaving its parked position.

(3) Any person who, without reasonable excuse—

- (a) obstructs an airport operator, his servants or agents acting in accordance with the provisions of this article,
- (b) refuses or fails within a reasonable time to comply with a request made by any such persons made in accordance with paragraph (2)(a) of this article, or
- (c) interferes with any such obstacle as is referred to in paragraph (2)(b) of this article,

shall be guilty of an offence under this Order.

(4) Nothing in this article shall preclude the airport operator levying airport charges.

(5) The airport operator may recover impounding expenses from the owner of an impounded aircraft.

(6) This article applies to any aircraft—

- (a) which the airport operator has reason to believe is either majority owned or effectively controlled by a person connected with Serbia or Montenegro, or

- (b) which is detained by virtue of article 3 and in respect of which the Secretary of State determines that the said aircraft has been used in violation of the United Nations resolutions.

(7) A certificate given by or on behalf of the Secretary of State stating that it has been determined that an aircraft has been used in violation of the United Nations resolutions shall be conclusive evidence of that matter.

Forfeiture of ships and cargo

7.—(1) In any case where—

- (a) a ship is impounded pursuant to article 4 and, in the case of a ship referred to in article 4(5) (a), the Secretary of State determines that the ship has been operated or used in violation of the United Nations resolutions, or

- (b) a ship's cargo has been the subject of a direction as to landing, and the Secretary of State determines that the cargo has been carried in violation of the United Nations resolutions,

the Secretary of State may order that the ship or cargo, as the case may be, shall be forfeited to him.

(2) In a case where the Secretary of State orders that a ship or cargo shall be forfeited to him he shall secure that the ship or cargo is sold for the best price that can reasonably be obtained.

(3) Failure to comply with the requirement in paragraph (2) of this article shall not, after the sale has taken place, be a ground for impugning the validity of the sale.

(4) The proceeds of any sale of a ship under this article shall be applied as follows, and in the following order, that is to say—

- (a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the ship having been imported into the United Kingdom;
- (b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the ship and its sale;
- (c) in payment of the charges referred to in article 4(5) and of any impounding expenses due in respect of the ship;
- (d) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the ship have been divested by reason of the forfeiture and sale and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;
- (e) to the Consolidated Fund.

(5) The proceeds of any sale of cargo under this article shall be applied as follows, and in the following order, that is to say—

- (a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the cargo having been imported into the United Kingdom;
- (b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the cargo and its sale;
- (c) in payment of cargo storage charges;
- (d) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the cargo have been divested by reason of the forfeiture and sale and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;
- (e) to the Consolidated Fund.

(6) For the purposes of this article, forfeiture in the case of a ship shall extend to—

- (a) the equipment of the ship and any stores for use in connection with its operation (being equipment or stores carried in the ship); and
- (b) any ship's documents carried in the ship;

and any such documents may, if the ship is sold by the Secretary of State, be transferred by him to the purchaser.

(7) A harbour authority shall not commence or continue the detention or proposed sale of any ship in pursuance of any statutory provision of local application affecting the harbour in a case where the Secretary of State has made an order of forfeiture under this article in relation to that ship, unless and until that order is set aside under article 10(5)(a).

Forfeiture of goods vehicles and cargo

8.—(1) In any case where—

- (a) a goods vehicle is impounded pursuant to article 5, and, in the case of a goods vehicle referred to in article 5(5)(a), the Secretary of State determines that the vehicle has been used in violation of the United Nations resolutions, or
- (b) cargo carried on a goods vehicle is detained by virtue of article 3, and the Secretary of State determines that the cargo has been carried in violation of the United Nations resolutions,

the Secretary of State may order that the goods vehicle or cargo, as the case may be, shall be forfeited to him.

(2) In a case where the Secretary of State orders that a goods vehicle or cargo shall be forfeited to him he shall secure that the vehicle or cargo is sold for the best price that can reasonably be obtained.

(3) Failure to comply with the requirement in paragraph (2) of this article shall not, after the sale has taken place, be a ground for impugning the validity of the sale.

(4) The proceeds of any sale of a goods vehicle under this article shall be applied as follows, and in the following order, that is to say—

- (a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the vehicle having been imported into the United Kingdom;
- (b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the vehicle and its sale;
- (c) in payment of any impounding expenses due in respect of the vehicle;
- (d) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the goods vehicle have been divested by reason of the forfeiture and sale, and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;
- (e) to the Consolidated Fund.

(5) The proceeds of any sale of cargo under this article shall be applied as follows, and in the following order, that is to say—

- (a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the cargo having been imported into the United Kingdom;
- (b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the cargo and its sale;
- (c) in payment of cargo storage charges;
- (d) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the cargo have been divested by reason of the forfeiture and sale, and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;

(e) to the Consolidated Fund.

(6) For the purposes of this article, forfeiture in the case of a goods vehicle shall extend to—

(a) equipment of the vehicle and any stores for use in connection with its operation (being equipment or stores carried on the vehicle); and

(b) any vehicle documents carried on the vehicle;

and any such documents may, if the vehicle is sold by the Secretary of State, be transferred by him to the purchaser.

Forfeiture of aircraft and cargo

9.—(1) In any case where—

(a) an aircraft is impounded pursuant to article 6 and, in the case of an aircraft referred to in article 6(5)(a), the Secretary of State determines that the aircraft has been used in violation of the United Nations resolutions, or

(b) aircraft cargo is detained by virtue of article 3, and the Secretary of State determines that the cargo has been carried in violation of the United Nations resolutions,

the Secretary of State may order that the aircraft or cargo, as the case may be, shall be forfeited to him.

(2) In a case where the Secretary of State orders that an aircraft or cargo shall be forfeited to him he shall secure that the aircraft or cargo is sold for the best price that can reasonably be obtained.

(3) Failure to comply with the requirement in paragraph (2) of this article shall not, after the sale has taken place, be a ground for impugning the validity of the sale.

(4) The proceeds of any sale of an aircraft under this article shall be applied as follows, and in the following order, that is to say—

(a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the aircraft having been imported into the United Kingdom;

(b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the aircraft and its sale;

(c) in payment of any airport charges and impounding expenses due in respect of the aircraft;

(d) in payment of any charge in respect of the aircraft which is due by virtue of regulations made under section 73 of the Civil Aviation Act 1982;

(e) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the aircraft have been divested by reason of the forfeiture and sale, and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;

(f) to the Consolidated Fund.

(5) The proceeds of any sale of cargo under this article shall be applied as follows and in the following order, that is to say—

(a) in payment of any duty (whether of customs or excise) or value added tax which is chargeable in consequence of the cargo having been imported into the United Kingdom;

(b) in payment of the expenses incurred by the Secretary of State in effecting the forfeiture of the cargo and its sale;

(c) in payment of cargo storage charges;

(d) subject to article 10 of the 1992 Order, in payment (where necessary pro rata) to or among the person or persons whose interests in the cargo have been divested by reason of the forfeiture and sale, and in respect of whom it does not appear to the Secretary of State that he or they have been party or privy to a violation of the United Nations resolutions;

(e) to the Consolidated Fund.

(6) For the purposes of this article, forfeiture in the case of an aircraft shall extend to—

- (a) the equipment of the aircraft and any stores for use in connection with its operation (being equipment or stores carried in the aircraft); and
- (b) any aircraft documents carried in the aircraft;

and any such documents may, if the aircraft is sold by the Secretary of State, be transferred by him to the purchaser.

(7) An aerodrome authority shall not commence or continue the detention or proposed sale of any aircraft in pursuance of section 88 of the Civil Aviation Act 1982 in a case where the Secretary of State has made an order of forfeiture under this article in relation to that aircraft, unless and until that order is set aside under article 10(5)(a).

Procedure for giving certificates and making orders of forfeiture

10.—(1) Before making a determination for the purposes of article 4(7), 5(5), or 6(6) the Secretary of State—

- (a) by notice in writing served on the owner of the ship or goods vehicle, or the owner or operator of the aircraft, as the case may be, shall state that he believes that the ship, goods vehicle, or aircraft has been used or operated in violation of the United Nations resolutions and shall invite that person to make representations to him in writing concerning the matter within such period of not less than 21 days beginning on the day on which the notice is given as may be specified in the notice and shall state that, if the owner or operator, as the case may be, so requests, he shall be afforded an opportunity of being heard by the Secretary of State; and
- (b) shall publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who claims to have an interest in the ship, goods vehicle or aircraft to make representations to him concerning the matter referred to in sub-paragraph (a) above, within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Secretary of State.

(2) Before making an order of forfeiture under article 7(1), 8(1) or 9(1) the Secretary of State—

- (a) by notice in writing served on the owner of the ship goods vehicle or cargo, or the owner or operator of the aircraft, as the case may be, shall state his intention to make such an order and shall invite that person to make representations to him in writing concerning the matter within such period of not less than 21 days beginning on the day on which the notice is given as may be specified in the notice and shall state that, if the owner or operator, as the case may be, so requests, he shall be afforded an opportunity of being heard by the Secretary of State; and
- (b) shall publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who claims an interest in the ship, goods vehicle, aircraft or cargo to make representations in writing to him concerning the proposed forfeiture within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Secretary of State.

(3) Where a person has under paragraph (1) or (2) of this article requested a hearing the procedure shall be as set out in Schedule 3 to this Order.

(4) An order of forfeiture shall come into effect on the later of—

- (a) the expiration of 21 days after it is made, or

- (b) in a case where proceedings under paragraph 5(a) of this article have been instituted, if and when those proceedings are dismissed.
- (a) (5) (a) Before the expiration of the period of 21 days referred to in paragraph (4) of this article, the owner of the ship, goods vehicle, or cargo and the owner or operator of the aircraft may institute proceedings against the Secretary of State to set aside the order of forfeiture on the grounds that the conditions for forfeiture set out in this Order have not been met.
- (b) Such proceedings shall be civil proceedings and may be instituted—
 - (i) in England or Wales and in Northern Ireland, in the High Court;
 - (ii) in Scotland, in the Court of Session;
- (6) For the purposes of this article proceedings shall be regarded as instituted—
 - (a) in England and Wales, when the writ or other originating process by which the proceedings are initiated is issued;
 - (b) in Scotland, when the writ by which the proceedings are initiated is lodged in the Court of Session.

Prohibition on the provision of services

11.—(1) Except under the authority of a licence granted by the Secretary of State under this article, no person shall provide any services to any person or body for the purposes of any business carried on in Serbia or Montenegro.

(2) For the purposes of this article “services” shall not include (a) telecommunications services; or (b) postal services.

(3) Any person who contravenes the provisions of this article shall be guilty of an offence under this Order.

(4) In the case of proceedings for an offence in contravention of this article it shall be a defence for the accused person to prove that he did not know and had no reason to believe that the services in question were to be provided for the purposes of any business carried on in Serbia or Montenegro.

Prohibition on entering territorial sea of Montenegro

12.—(1) Except under the authority of a licence granted by the Secretary of State under this article no ship to which this article applies shall enter the territorial sea of Montenegro.

(2) The owner, operator and master of such a ship which enters such waters shall each be guilty of an offence under this Order.

(3) This article applies to any ship which is—

- (a) (i) registered in the United Kingdom; or
- (ii) not registered in any country but is majority owned by a British citizen or a body corporate incorporated in the United Kingdom; and
- (b) is being used for commercial purposes.

(4) In the case of proceedings for an offence under this article it shall be a defence for the accused person to prove—

- (a) that he did not know and could not reasonably have known that the ship was entering the territorial sea of Montenegro; or
- (b) that the ship only entered such waters by reason of stress of weather or other case of force majeure.

Application of Articles 11 and 14

13. The provisions of articles 11 and 14 shall apply to any person within the United Kingdom and to any person elsewhere who:

- (a) is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject, or a British protected person; or
- (b) is a body incorporated or constituted under the law of any part of the United Kingdom.

Offences in connection with applications for licence, conditions attaching to licences, etc.

14.—(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 under this Order and who fails to comply with any condition 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 after the doing of the act authorised by the licence.

Obtaining of evidence and information

15. The provisions of Schedule 2 to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Commissioners of Customs and Excise of evidence and information for the purpose of securing compliance with or detecting evasion of this Order or detecting violation of the United Nations resolutions and in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Commissioners of Customs and Excise, of evidence of the commission of an offence under this Order or, with respect to any of the matters regulated by this Order, of an offence relating to customs.

Penalties and Proceedings

16.—(1) Any person guilty of an offence under article 11 or 12 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 3(10)(b)(ii) or paragraph 5(b) or (d) of Schedule 2 to this Order shall be liable:—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both;
- (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 4(3) or (4), 5(3), 6(3), or 14(1) or (2) 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 3(10)(a), (b)(i) or (c) or paragraph 5(a) or (c) of Schedule 2 to this Order 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) 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.

(6) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980⁽¹⁰⁾, a summary offence under this Order may be tried by a magistrates' court in England and Wales if an information is laid at any time within 3 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.

(7) Notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975⁽¹¹⁾, 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.

(8) Notwithstanding anything in Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹²⁾, summary proceedings for an offence under this Order in Northern Ireland may be instituted at any time within 3 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) 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 (6), (7) and (8) of this article 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.

(10) 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.

(11) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984⁽¹³⁾ 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.

(12) In Northern Ireland, paragraph (2) of Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹⁴⁾ shall apply to the offences under this Order that are not arrestable offences by virtue of a 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.

⁽¹⁰⁾ 1980 c. 43.

⁽¹¹⁾ 1975 c. 21.

⁽¹²⁾ S.I. 1981/1675 (N.I. 26).

⁽¹³⁾ 1984 c. 60.

⁽¹⁴⁾ S.I. 1989/1341 (N.I. 12).

(13) 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 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.

Notices

17.—(1) This article has effect in relation to any notice required by article 10 to be served on or given to any person.

(2) Any such notice may be served on or given to any person—

- (a) by delivering it to him, or
- (b) by leaving it at his proper address, or
- (c) by sending it by post to him at that address, or
- (d) by sending it to him at that address by telex or other similar means which produces a document containing the text of the communication, or
- (e) in the case of a notice to be served under article 10(1) or (2) by affixing it to the ship, goods vehicle or aircraft concerned.

(3) Any such notice may, in the case of a body corporate, be served on or given to the secretary, clerk or similar officer of that body.

(4) For the purposes of this article and section 7 of the Interpretation Act 1978⁽¹⁵⁾ (service of documents by post) in its application to this article, the proper address of any person on whom or to whom any notice is to be served or given is his usual or last known address or place of business (whether in the United Kingdom or elsewhere), except that in the case of a body corporate or its secretary, clerk or similar officer it shall be the address of the registered or principal office of that body in the United Kingdom (or, if it has no office in the United Kingdom, of its principal office, wherever it may be).

(5) In the case of a person registered under any of the United Kingdom registration provisions as the owner of any ship, or goods vehicle, so registered or as a person entitled as owner to a legal interest in an aircraft so registered or a share therein, the address for the time being recorded in relation to him in the register in which the ship, or goods vehicle or aircraft is registered shall also be treated for the purposes of this article and section 7 of the Interpretation Act 1978 as his proper address.

(6) If the person on whom or to whom any notice mentioned in paragraph (1) of this article is to be served or given has notified the Secretary of State of an address within the United Kingdom, other than an address determined under paragraph (4) or (5) of this article, as the one at which he or someone else on his behalf will accept such notices, that address shall also be treated for the purposes of this article and section 7 of the Interpretation Act 1978 as his proper address.

(7) Any notice mentioned in paragraph (1) of this article shall, where there are two or more owners registered under any of the United Kingdom registration provisions, be treated as duly served on or given to each of those owners—

- (a) in the case of a ship in relation to which a managing owner is for the time being registered under section 59(1) of the Merchant Shipping Act 1894, if served on or given to that managing owner, and

(15) 1978 c. 30.

- (b) in any other case, if served on or given to any one of the registered owners.
- (8) For the purpose of affixing a notice under paragraph (2)(e) of this article, the Secretary of State may enter, or authorise entry, upon any land and enter, or authorise entry of or upon the ship, goods vehicle or aircraft concerned.
- (9) In this article “the United Kingdom registration provisions” means—
- (a) Part I of the Merchant Shipping Act 1894,
 - (b) section 5 of the Merchant Shipping Act 1983⁽¹⁶⁾,
 - (c) Part II of the Merchant Shipping Act 1988⁽¹⁷⁾,
 - (d) sections 19 and 23 of the Vehicles (Excise) Act 1971⁽¹⁸⁾, and
 - (e) Part I of the Air Navigation Order 1989⁽¹⁹⁾.

Exercise of powers of the Secretary of State

18.—(1) The Secretary of State may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to make an order of forfeiture under article 7, 8 or 9 and the power to give authority under Schedule 2 to this Order to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Secretary of State shall be construed accordingly.

(2) Any licence granted under this Order 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 Secretary of State.

N. H. Nicholls
Clerk of the Privy Council

⁽¹⁶⁾ 1983 c. 13.

⁽¹⁷⁾ 1988 c. 12.

⁽¹⁸⁾ 1971 c. 10.

⁽¹⁹⁾ S.I. 1989/2004; the relevant amending instrument is S.I. 1992/2992.