
STATUTORY INSTRUMENTS

2003 No. 2627

The Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003

GENERAL

Customs powers to demand evidence of destination which goods reach

7. Any exporter or any shipper of goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's 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 applications for licences, conditions attaching to licences, etc.

8.—(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 Governor 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 Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

9.—(1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor —

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

(2) Any such officer, and any person acting under his direction, 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.

(3) 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.

(4) 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

10.—(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)), 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).

(2) The further action referred to in paragraph (1)(c) 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 Territory, 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); 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 13(3), where —

- (a) a master refuses or fails to comply with a request made under paragraph 2(b); or
- (b) 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.

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

- (5) In this article “authorised officer” means —
- (a) any commissioned naval or military officer;
 - (b) any British consular officer;
 - (c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

11.—(1) Where any 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 (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;
- (b) 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; and
- (c) if the aircraft is then in the Territory, any 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 (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 13(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) 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 person” means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

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

- (a) 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;
- (b) 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;
- (c) any 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 (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 13(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) 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 person” means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 10 to 12

13.—(1) No information furnished or document produced by any person in pursuance of a request made under article 10, 11 or 12 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 article 10, 11 or 12 to request that it be furnished or produced or 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 British overseas territory;
- (c) on the authority of the Governor, 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 the Democratic Republic of the Congo decided upon by the Security Council of the United Nations or the Council of the European Union; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings —
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 10, 11 or 12 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.

- (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 10(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 10, 11 or 12 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 such person (or any person acting under the authority of any such person) in the exercise of his powers under article 10, 11 or 12.

(4) Nothing in articles 10 to 13 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

14. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor —

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

Penalties and proceedings

15.—(1) Any person guilty of an offence under article 3, 4, 5 or 6(3) 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 £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 13(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 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; or

- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (3) Any person guilty of an offence under article 8(1) or (2) or article 9(4) 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 £5,000 or its equivalent.
- (4) Any person guilty of an offence under article 13(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 £5,000 or its equivalent or to both.
- (5) Any person guilty of an offence under article 7 or 9(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (6) 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.
- (7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.
- (8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
- (9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:
- 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 Governor

16.—(1) The Governor 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 give authority under Schedule 3 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 Governor 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.

Miscellaneous

17.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law

substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.