

2001 No. 396

UNITED NATIONS

The Afghanistan (United Nations Sanctions) Order 2001

<i>Made</i>	<i>14th February 2001</i>
<i>Laid before Parliament</i>	<i>15th February 2001</i>
<i>Coming into force</i>	<i>16th February 2001</i>

At the Court at Buckingham Palace, the 14th day of February 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolutions adopted on 15th October 1999 and 19th December 2000, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to Afghanistan:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, operation, extent and revocation

1. - (1) This Order may be cited as the Afghanistan (United Nations Sanctions) Order 2001 and shall come into force on 16th February 2001.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling or postponing or suspending the operation of the resolutions adopted by it on 15th October 1999 or 19th December 2000, in whole or in part, this Order shall cease to have effect or its operation shall be postponed or suspended, in whole or in part, 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.

(4) Articles 3, 4, 5, 7, 8, 9, 10, 14 and 15 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, a British National (Overseas), or a British protected person; or

(b) is a body incorporated or constituted under the law of any part of the United Kingdom.

(5) The Afghanistan (United Nations Sanctions) Order 1999[2] is hereby revoked.

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 operator" means the person for the time being having the management of an airport or, in relation to a particular airport, the management of that airport;

"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;

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

"exportation" in relation to any vessel, submersible vehicle or aircraft, includes the taking out of the United Kingdom of the vessel, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"funds" means financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

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

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or the vehicle;

"owner", in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

"person connected with Usama bin Laden" means -

- (a) any person designated as such by the Sanctions Committee; or
- (b) any person acting on behalf of a person covered by paragraph (a) above;

"relevant institution" means -

(a) an institution authorised under the Banking Act 1987[3];

(b) a European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992[4] which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits or other repayable funds from the public; and

(c) a building society within the meaning of the Building Societies Act 1986[5];

"restricted goods" means the goods specified in Schedule 1;

"the Sanctions Committee" means the Committee of the Security Council of the United Nations established by paragraph 6 of Resolution 1267 adopted on 15th October 1999;

"ship" has the meaning it bears in section 313 of the Merchant Shipping Act 1995[6];

"shipment" (and cognate expressions) and "stores" shall have the meanings they bear in the Customs and Excise Management Act 1979[7];

"the Taliban" means the Afghan political faction known as the Taliban, which also calls itself the "Islamic Emirate of Afghanistan";

"vehicle" means land transport vehicle.

RESTRICTED GOODS, TECHNICAL ASSISTANCE AND TRAINING

Supply of restricted goods

3. - (1) Any person who, except under the authority of a licence granted by the Secretary of State under this article or article 4 -

- (a) supplies or delivers,
- (b) agrees to supply or deliver, or
- (c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in Afghanistan shall be guilty of an offence under this Order unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Afghanistan.

(2) Nothing in paragraph (1)(b) or (c) of this article shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Secretary of State under this article.

Exportation of restricted goods to Afghanistan

4. Except under the authority of a licence granted by the Secretary of State under this article, restricted goods are prohibited to be exported from the United Kingdom to any destination in Afghanistan or to any destination for the purpose of delivery,

directly or indirectly, to or to the order of any person in Afghanistan.

Provision of certain technical assistance or training

5. Any person who, except under the authority of a licence granted by the Secretary of State under this article, directly or indirectly provides to a person in Afghanistan any technical assistance or training related to:

- (a) the supply, delivery, manufacture, maintenance or use of any goods specified in paragraph 1 of Schedule 1, or
- (b) the military activities of the Taliban,

shall be guilty of an offence under this Order.

Use of ships, aircraft and vehicles: restricted goods, technical assistance and training

6. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Secretary of State under this article, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Afghanistan to any destination therein.

(2) This article applies to ships registered in the United Kingdom, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

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

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) of this article then -

- (a) in the case of a ship registered in the United Kingdom or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in sub-paragraph (a) or sub-paragraph (b) of paragraph (2) of this article, the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Afghanistan to any destination therein.

(4) Nothing in paragraph (1) of this article shall apply where the supply or delivery or exportation from the United Kingdom of the goods concerned to Afghanistan was authorised by a licence granted by the Secretary of State under article 3 or article 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

FUNDS

Making funds available to Usama bin Laden and associates

7. Any person who, except under the authority of a licence granted by the Treasury under this article, makes any funds available to or for the benefit of Usama bin Laden or any person connected with Usama bin Laden is guilty of an offence.

Assets of the Taliban

8. - (1) Any person who, except under the authority of a licence granted by the Treasury under this article, makes any funds to which this article applies available to or for the benefit of the Taliban shall be guilty of an offence under this Order.

(2) This article applies to any funds owned or controlled directly or indirectly by the Taliban, or by an undertaking owned or controlled by the Taliban, as designated by the Sanctions Committee.

Freezing of funds on suspicion

9. - (1) Where the Treasury has reasonable grounds for suspecting that any funds held by any person are or may be -

- (a) funds of Usama bin Laden or any person connected with Usama bin Laden,
- (b) held on behalf of Usama bin Laden or any such person, or
- (c) funds to which article 8(1) applies,

the Treasury may by notice direct that those funds are not to be made available to Usama bin Laden or to a person connected with Usama bin Laden, or to the Taliban or a person connected with the Taliban, as the case may be, except under the authority of a licence granted by the Treasury under article 7 or 8.

(2) A notice given under paragraph (1) shall specify the period for which it is to have effect, which shall be not longer than 5 working days.

(3) In paragraph (2), "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971[8] in any part of the United Kingdom.

(4) The Treasury may by notice revoke a direction under paragraph (1) at any time.

(5) The expiry or revocation of a direction shall not affect the application of article 7 or 8 (as the case may be) in respect of the funds in question.

(6) A notice under paragraph (1) or (4) shall be given in writing to the person holding the funds in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held ("the owner").

(7) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(8) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.

(9) A recipient who fails to comply with such a requirement as is mentioned in paragraph (6) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 7, 8 or 9(8)

10. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 7, 8 or 9(8) is guilty of an offence.

Failure to disclose knowledge or suspicion of sanctions offences

11. - (1) A relevant institution is guilty of an offence if -

(a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time -

(i) is Usama bin Laden or a person connected with Usama bin Laden;
or

(ii) is a person connected with the Taliban; or

(iii) has committed an offence under article 7, 8, 9(8) or 17(2); and

(b) it does not disclose to the Treasury the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matters comes to its attention.

(2) Where a relevant institution discloses to the Treasury -

(a) its knowledge or suspicion that a person is Usama bin Laden or a person connected with Usama bin Laden or a person connected with the Taliban or a person who has committed an offence under article 7, 8, 9(8) or 17(2), or

(b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

FLIGHTS

Prohibition of flights

12. - (1) Except under the authority of a licence granted by the Secretary of State under this article -

(a) no aircraft, wherever registered, shall take off from, land in or fly over the territory of the United Kingdom if its destination is, or if it has taken off from, Afghanistan; and

(b) no aircraft designated by the Sanctions Committee as owned, leased or operated by or on behalf of the Taliban, wherever registered, shall take off from or land in the territory of the United Kingdom.

(2) If any aircraft is used in contravention of the provisions of this article, the operator and the commander of the aircraft shall be guilty of an offence under this Order.

Powers of airport operator

13. - (1) For the purpose of enforcing the prohibitions contained in article 12, it shall be the duty of an airport operator to take all such steps as may be necessary to secure that any aircraft at his airport -

(a) whose commander or operator has indicated an intention to fly the aircraft to a destination in Afghanistan or which the airport operator otherwise has reason to suspect will be flown to such a destination;

(b) which the airport operator knows or has reason to suspect has, since 19th January 2001, taken off from Afghanistan; or

(c) which the airport operator knows or has reason to suspect is designated by the Sanctions Committee as owned, leased or operated by or on behalf of the Taliban,

is prevented from taking off unless permission to do so has been granted under article 12.

(2) Without prejudice to the generality of paragraph (1) above, such steps may include -

(a) the refusal of any refuelling service for the aircraft;

(b) the placing of obstacles in the path of a parked aircraft to prevent it from leaving its parked position; and

(c) requiring the commander or operator of the aircraft to move it, or to secure that it is moved, to another part of the airport.

(3) Any person who, without reasonable excuse, obstructs an airport operator, his servants or agents acting in accordance with the provisions of this article, or refuses or fails within a reasonable time to comply with a requirement by any such persons made in accordance with paragraph 2(c) of this article, shall be guilty of an offence under this Order.

OFFICES AND BUSINESSES

Taliban offices

14. Any person who establishes or maintains any office or other premises under the name of "the Taliban" or "the Islamic Emirates of Afghanistan" shall be guilty of an offence under this Order.

Ariana Afghan Airlines

15. - (1) Any person who carries on any business, or establishes or maintains any place of business, under the name of "Ariana Afghan Airlines" shall be guilty of an offence under this Order.

(2) Any person who, except under the authority of a licence granted by the Secretary of State under this article, establishes or maintains any place of business in connection with the carriage of persons or goods by air (whether to or from the United Kingdom or elsewhere) by any person connected with the Taliban shall be guilty of an offence under this Order, subject to paragraph (4) below.

(3) Any person connected with the Taliban who, except under the authority of a licence granted by the Secretary of State under this article, carries on any business of carrying persons or goods by air (whether to or from the United Kingdom or elsewhere) shall be guilty of an offence under this Order.

(4) In the case of proceedings for an offence in contravention of paragraph (2) of this article, it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the carriage of persons or goods was by a person connected with the Taliban.

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.

(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 sub-paragraph 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[9], 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[10], 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.

(10) Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981[11], 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[12] 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[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

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.

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.

A K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

RESTRICTED GOODS

(1) The goods specified in Part III of Schedule 1 to the Export of Goods (Control) Order 1994[14].

(2) Acetic Anhydride.

SCHEDULE 2

Article 22

DISCLOSURE OF INFORMATION - LISTED TERRITORIES

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falklands Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena

St Helena Dependencies

South Georgia and the South Sandwich Islands

Turks and Caicos Islands

The UK Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Virgin Islands

SCHEDULE 3

Article 23

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Secretary of State, the Treasury or the Commissioners of Customs and Excise may request any person in or resident in the United Kingdom to furnish to him or to them any information in his possession or control, or to produce to him or to

them any document in his possession or control, which he or they may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2. - (1) If any justice of the peace is satisfied by information on oath given by any constable or person authorised by the Secretary of State, the Treasury or the Commissioners of Customs and Excise to act for the purposes of this paragraph either generally or in a particular case:

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified, or

(b) that any documents which ought to have been produced under paragraph 1 above and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any constable or any officer of Customs and Excise, together with any other persons named in the warrant and any other constable, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) above may do any or all of the following things:

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1 of this Schedule; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) above which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A constable or officer of Customs and Excise lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) above may -

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a) above, if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

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

(5) Where, by virtue of this paragraph a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to Scotland any reference to a justice of the peace includes a reference to a sheriff; and any reference to information on oath is a reference to evidence on oath.

3. A person authorised by the Secretary of State or the Treasury to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) above shall be disclosed except -

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

Provided that a person who has obtained information or is in the 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 Schedule 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 territory listed in Schedule 2 to this Order;

(c) on the authority of the Secretary of State or the Treasury, to any organ of the United Nations or to any person in the service of the United Nations or to 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 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, 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.

5. Any person who -

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) furnishes any information or produces any documents 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; or

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

Notes:

[1] 1946 c. 45.

[2] S.I. 1999/3133.

[3] 1987 c. 22.

[4] S.I. 1992/3218, amended by S.I.s 1993/3225, 1995/1217, 1995/1442, 1996/1669 and 1999/2094, Chapter II of Part I of Schedule 5 to the Bank of England Act 1998 (c. 11) and sections 70(1) and 79(14) and Part II of Schedule 6 of the Criminal Justice Act 1993 (c. 36).

[5] 1986 c.53.

[6] 1995 c. 21.

[7] 1979 c. 2.

[8] 1971 c. 80.

[9] 1980 c. 43.

[10] 1995 c. 46.

[11] S.I. 1981/1675 (N.I. 26).

[12] S.I. 1984/1341 (N.I. 12).

[13] S.I. 1989/1341 (N.I. 12).

[14] S.I. 1994/1191 as amended by S.I.s 1996/2663, 1997/1008, 1997/2758, 1999/63, 1997/1777, 2000/1239, 2000/2140 and 2000/2264.