

# Statutory Instrument 1994 No. 1323

## The Haiti (United Nations Sanctions) Order 1994

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STATUTORY INSTRUMENTS

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**1994 No. 1323**

**UNITED NATIONS**

The Haiti (United Nations Sanctions) Order 1994

<i>Made</i>	<i>18th May 1994</i>
<i>Laid before Parliament</i>	<i>19th May 1994</i>
<i>Coming into force</i>	<i>23rd May 1994</i>

At the Court at Buckingham Palace, the 18th day of May 1994

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 16th June 1993 and 6th May 1994, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Haiti:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946<sup>[407]</sup>, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation, commencement, operation and extent**

1.—(1) This Order may be cited as the Haiti (United Nations Sanctions) Order 1994 and shall come into force on 23rd May 1994.

(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 resolutions adopted by it on 16th June 1993 and 6th May 1994, 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—

"the 1993 Order" means the Haiti (United Nations Sanctions) Order 1993<sup>[408]</sup>;

"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;

"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;

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

"person connected with Haiti" means

(i) any person or body exercising for the time being public functions in Haiti;

(ii) any other person in, or resident in, Haiti;

(iii) any body incorporated or constituted under the law of Haiti;

(iv) any body, wherever incorporated or constituted, which is controlled by any of the persons or bodies mentioned in sub-paragraphs (i) to (iii) above; and

(v) any person acting on behalf of any of the above mentioned persons;

"public transport" has the same meaning as in article 107 of the Air Navigation Order 1989<sup>[409]</sup>;

"scheduled journey" has the same meaning as in article 106 of the Air Navigation Order 1989;

"ship" has the meaning it bears in section 742 of the Merchant Shipping Act 1894<sup>[410]</sup>;

"shipment" (and cognate expressions) and "stores" shall have the meanings they bear in the Customs and Excise Management Act 1979<sup>[411]</sup>;

"vehicle" means land transport vehicle.

### **Prohibition of Flights**

3.—(1) Subject to article 5 of this Order, no aircraft, wherever registered, shall, except with the permission of the Secretary of State granted under this article or article 8 of this Order, take off from, land in or fly over the territory of the United Kingdom, if its destination is, or if, since 23rd May 1994, it has taken off from, Haiti.

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

### **Powers of Airport Operator**

4.—(1) For the purpose of enforcing the prohibitions contained in article 3 of this Order, 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 Haiti or which the airport operator otherwise has reason to suspect will be flown to such a destination; or

(b) which the airport operator knows or has reason to suspect has, since 23rd May 1994, taken off from Haiti, is prevented from taking off unless permission to do so has been granted under article 3 or article 8 of this Order.

(2) Without prejudice to the generality of paragraph (1) of this article, 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 request by any such persons made in accordance with paragraph 2(c) of this article, shall be guilty of of an offence under this Order.

#### **Saving for scheduled passenger flights**

5. Nothing in article 3 or 4 of this Order shall apply to an aircraft carrying passengers and undertaking a scheduled journey for the purpose of public transport.

#### **Supply of goods to Haiti**

6.—(1) Except under the authority of a licence granted by the Secretary of State under this article or the 1993 Order, no person mentioned in article 11 of this Order shall:

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of, any goods other than foodstuffs, or goods to be used for medical purposes, to or to the order of a person connected with Haiti.

(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 or article 7 of this Order or under the 1993 Order.

#### **Exportation of goods to or from Haiti**

7.—(1) Except under the authority of a licence granted by the Secretary of State under this article or the 1993 Order, all goods other than foodstuffs, or goods to be used for medical purposes, are prohibited to be exported from the United Kingdom to any destination in Haiti or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person connected with Haiti.

(2) Except under the authority of a licence granted by the Secretary of State under this article or under the Import of Goods (Control) Order 1954<sup>[412]</sup>, all goods originating in Haiti are prohibited to be imported into the United Kingdom.

(3) Except under the authority of a licence granted by the Secretary of State under this article, no person mentioned in article 11 shall do any act

calculated to promote the exportation of any goods from Haiti.

(4) Except under the authority of a licence granted by the Secretary of State under this article, in respect of any goods that have been exported from Haiti after 23rd May 1994, no person mentioned in article 11 shall, by way of trade or otherwise for gain:

- (a) acquire or dispose of such goods or of any property or interest in them or any right to or charge upon them;
- (b) process them; or
- (c) do any act calculated to promote any such acquisition, disposal or processing by himself or any other person.

(5) Nothing in paragraph (3) or (4) of this article shall apply where the importation of the goods into the United Kingdom is or was authorised by a licence granted by the Secretary of State under this article or under the Import of Goods (Control) Order 1954.

### **Carriage of goods destined for Haiti**

8.—(1) Without prejudice to the generality of article 6 of this Order, and except under the authority of a licence granted by the Secretary of State under this article or the 1993 Order, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of any goods if the carriage is, or forms part of, carriage from any place outside Haiti to any destination therein, or to any person connected with Haiti.

(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 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 Haiti to any destination therein or to any person connected with Haiti.

(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 Haiti was authorised by a licence granted by the Secretary

of State under article 6 or article 7 of this Order or under the 1993 Order.

(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.

### **Assets of Haiti**

**9.**—(1) Except with permission granted by or on behalf of the Treasury, no person mentioned in article 11 of this Order shall—

(a) make any payment or part with any gold, securities or investments; or

(b) make any change in the persons to whose credit any sum is to stand or to whose order any gold, securities or investments are to be held,

where any such action is action to which this article applies.

(2) Action to which this article applies is action which is likely to make available to or for the benefit of any persons or bodies exercising for the time being public functions in Haiti any funds or other financial or economic resources, whether by their removal from the United Kingdom or otherwise, or otherwise to remit or transfer funds or other such resources to or for the benefit of such persons or bodies.

(3) Any permission granted by or on behalf of the Treasury under this article may be granted either absolutely or subject to conditions and may be varied or revoked at any time by, or on behalf of, the Treasury.

(4) In this article:

(a) "gold", "payment" and "securities" shall have the meanings they bear in section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964<sup>[413]</sup>; and

(b) "investments" means any asset, right, or interest falling within any paragraph of Part 1 of Schedule 1 to the Financial Services Act 1986<sup>[414]</sup> which is not a security.

### **Bonds**

**10.**—(1) Except under the authority of a licence granted by the Secretary of State under this article—

(a) no person mentioned in article 11 of this Order shall make any payment to or to the order of any person connected with Haiti under or in respect of a bond to which this article applies;

(b) no person mentioned in article 11 of this Order shall do any act for the purpose of obtaining payment or make any payment, in respect of any right to indemnity in respect of any bond to which this article applies where payment under the bond is, or if payment were to be made by a person referred to in article 11 of this Order would be, unlawful by virtue of sub-paragraph (a) of this paragraph.

(2) A bond to which this article applies is a bond given in connection with the performance of a contract the performance of which is unlawful, wholly or in part, by virtue of this Order, the 1993 Order, Council Regulation (EC) No.1608/93<sup>[415]</sup>, or by virtue of any law of any place which substantially corresponds with the relevant provisions of this

Order.

(3) In this article

(a) "bond" means an agreement under which a person("the obligor") agrees that, if called upon to do so, or if a third party fails to fulfil contractual obligations owed to another, the obligor will make payment to or to the order of the other party to the agreement;

(b) "make any payment" means make payment by any method, including but not restricted to the grant, or any agreement to the exercise, of any right to set off, accord and satisfaction and adjustment of any account, or any similar means.

### **Application of Articles 6, 7, 9 and 10**

**11.**—(1) The provisions of articles 6, 7(3) and (4), 9 and 10 of this Order 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.

(2) Subject to the provisions of paragraph (3) of this article, any person specified in paragraph (1) of this article who contravenes the provisions of article 6, 7(3) and (4), 9 or 10 of this Order shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of article 6 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to or to the order of a person connected with Haiti.

(4) In the case of proceedings for an offence in contravention of article 7(3) or (4) of this Order, it shall be a defence for the accused person to show that he did not know and had no reason to suppose that the goods in question were exported from Haiti or were exported therefrom after 23rd May 1994, as the case may be.

(5) In the case of proceedings for an offence in contravention of article 10(1)(a) or (b) of this Order it shall be a defence for the accused person to prove that—

(a) he did not know and had no reason to suppose that payment was made to or to the order of a person connected with Haiti; or

(b)

(i) he did not know and had no reason to suppose that the bond was given in respect of a contract the performance of which was unlawful as described in article 10 of this Order; and

(ii) he made all reasonable enquiries to ascertain whether the bond was given in respect of such a contract:

Provided that sub-paragraph (b) shall not apply in the case of

proceedings for an offence in contravention of article 10(1)(b) of this Order where the accused person is a party to the contract in respect of which the bond was given.

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

**12.** 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

- (i) a destination to which they were authorised to be exported by a licence granted under this Order; or
- (ii) 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.**

**13.—(1)** If for the purposes of obtaining any licence or permission 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 permission or licence granted by the Secretary of State or with permission granted by or on behalf of the Treasury under this Order and who fails to comply with any condition attaching to that licence or permission 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,

- (i) by the Secretary of State after the doing of the act authorised by the permission or licence, or
- (ii) by or on behalf of the Treasury after the doing of the act with permission granted by or on behalf of the Treasury.

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

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

(a) declare whether or not he has with him any goods which are destined for Haiti or for delivery, directly or indirectly, to or to the order of a person connected with Haiti; and

(b) produce any such goods as aforesaid which he has with him, and 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, 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, aircraft and vehicles**

**15.—(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 registered in the United Kingdom has been or is being or is about to be used in contravention of paragraph (1) of article 8 of this Order, 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, and 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 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 or of being about to be used in contravention of paragraph (1) of article 8 of this Order, exercise the following further powers with a view to the prevention of the commission (or the continued commission) of any such contravention 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) of this paragraph; 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 aircraft registered in the United Kingdom or any aircraft for the time being chartered to any person specified in paragraph (2) of article 8 of this Order has been or is being or is about to be used in contravention of paragraph (1) of that article, that officer or that authorised person 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 officer or that authorised person 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, if the aircraft is then in the United Kingdom, any such officer or any such authorised person (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 to remain in the United Kingdom until notified that the aircraft may depart, and the charterer, the operator and the commander shall comply with any such request.

(4) Without prejudice to the provisions of paragraph (10) of this article, where any such officer as aforesaid or any person authorised as aforesaid has reason to suspect that any request that an aircraft should remain in the United Kingdom that has been made under paragraph (3) of this article may not be complied with, that officer or that authorised person 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
- (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 vehicle in the United Kingdom has been or is being or is about to be used in contravention of paragraph (1) of article 8 of this Order, that officer or that authorised person may request the operator and 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, and that officer or that authorised person 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 any such officer or such authorised person (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of such a request) may further require the operator or driver to cause the vehicle to remain in the United Kingdom until notified that the vehicle may depart; and the operator and the driver shall comply with any such request.

(6) Without prejudice to the provisions of paragraph (10) of this article, where any such officer as aforesaid or any person authorised as aforesaid has reason to suspect that any request that a vehicle should remain in the United Kingdom that has been made under paragraph (5) of this article may not be complied with, that officer or authorised person 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 vehicle;
- (b) detain, or authorise the detention of, that vehicle; and
- (c) use, or authorise the use of reasonable force.

(7) Before or on exercising any power conferred by paragraph (3), (4), (5) or (6) of this article, such an authorised person as is referred to in paragraph (3) or (5) shall, if requested so to do, produce evidence of his authority.

(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; or

- (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; or

- (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 Haiti 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 or a charterer or an operator or a commander of an aircraft or an operator or driver of a vehicle 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) who 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 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, aircraft or vehicles.

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

**16.** The provisions of the Schedule to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State, the Commissioners of Customs and Excise or the Treasury, of evidence and information for the purpose of securing compliance with or detecting evasion of this Order and in order to facilitate the obtaining, by or on behalf of the Secretary of State, the Commissioners of Customs and Excise or the Treasury, 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**

**17.—(1)** Any person guilty of an offence under article 8(3) or article 11(2) of this Order 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(2) or article 15(10)(b)(ii) of this Order or paragraph 5(b) or (d) of the Schedule 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 13(1) or (2), or article 14(3) of 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;

(b) on summary conviction to a fine not exceeding the statutory

maximum.

(4) Any person guilty of an offence under article 12 or article 14(2) of this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Any person guilty of an offence under article 4(3), article 15(10) (a), (b)(i) or (c) of this Order or paragraph 5(a) or (c) of the Schedule 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.

(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) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980<sup>[416]</sup>, a summary offence under this Order may be tried by a magistrate's 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.

(8) Notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975<sup>[417]</sup>, summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge: and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section:

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

(9) Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>[418]</sup>, 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.

(10) 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 (7), (8) and (9) 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.

(11) 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.

(12) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984<sup>[419]</sup> shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(13) In Northern Ireland, paragraph (2) of article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>[420]</sup> 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.

(14) 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.

#### **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 give authority under the Schedule 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 licences 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 authority that granted them.

#### **Revocation of 1993 Order**

**19.** — The 1993 order is revoked.

*N.H. Nicholls*

Clerk of the Privy Council

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*Notes:*

[407] 1946 c. 45. [back](#)

[408] S.I. [1993/1784](#). [back](#)

[409] S.I. [1989/2004](#); relevant amending instruments are S.I. [1990/2154](#), [1991/1726](#). [back](#)

[410] 1894 c. 60. [back](#)

[411] 1979 c. 2. [back](#)

[412] S.I. 1954/23, as amended by S.I. 1954/629, 1975/2117 and 1978/806. [back](#)

[413] 1964 c. 60. [back](#)

[414] 1986 c. 60. [back](#)

[415] OJ No. L155, 26.6.93, p.1, to which there are amendments not relevant to this article. [back](#)

[416] 1980 c. 43. [back](#)

[417] 1975 c. 21. [back](#)

[418] S.I. 1981/1675 (N.I.26). [back](#)

[419] 1984 c. 60. [back](#)

[420] S.I. [1989/1341](#) (N.I.12). [back](#)

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