

1990 No. 2167

CHANNEL TUNNEL

The Channel Tunnel (Customs and Excise) Order 1990

<i>Made</i>	- - - -	<i>1st November 1990</i>
<i>Laid before Parliament</i>		<i>9th November 1990</i>
<i>Coming into force</i>	-	<i>1st December 1990</i>

The Commissioners of Customs and Excise in exercise of the powers conferred upon them by sections 11(1)(a), (c), (d), (g) and (h), 11(2), 11(3)(a) and (d), and 13(1) and (2) of the Channel Tunnel Act 1987(a) and of all other powers enabling them in that behalf hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Channel Tunnel (Customs and Excise) Order 1990 and shall come into force on 1st December 1990.

**Interpretation**

2.—(1) In this Order—

- “the Act of 1979” means the Customs and Excise Management Act 1979(b);
- “the Act of 1987” means the Channel Tunnel Act 1987;
- “customs approved area” has the meaning given by article 3(1) below;
- “the tunnel” except in the expression “tunnel system” means that part of the tunnel system comprising the tunnels specified in section 1(7)(a) of the Act 1987 or any of those tunnels.

(2) In this Order the following expressions have the meanings assigned to them by section 1 of the Act of 1979:

- “approved wharf”;
- “the boundary”;
- “commander”;
- “the Commissioners”;
- “the customs and excise Acts”;
- “customs and excise airport”;
- “goods”;
- “officer”;
- “owner”;
- “port”;
- “ship”;
- “shipped” and cognate expressions.

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(a) 1987 c.53.  
(b) 1979 c.2.

### **Channel tunnel customs approved areas**

3.—(1) The Commissioners may approve, for such periods and subject to such conditions as they think fit, places within the tunnel system for the customs and excise control of persons, goods or vehicles in relation to the construction, operation or use of the tunnel or any part of it and any place so approved is referred to in this Order as a 'customs approved area'.

(2) Without prejudice to the generality of paragraph (1) above, the conditions and restrictions mentioned in that paragraph may include such as relate to—

- (a) the security of a customs approved area;
- (b) the access and egress of persons, goods and vehicles to and from it;
- (c) the giving of notice to the Commissioners of the arrival of persons at it through the tunnel from France;
- (d) the provision of accommodation for the use of the Commissioners and the costs of and incidental to such provision;
- (e) the processing of goods in it;
- (f) the keeping of records.

(3) Different conditions and restrictions may be imposed in respect of different parts of a customs approved area.

(4) The Commissioners may at any time for reasonable cause revoke or vary the terms of any approval given under paragraph (1).

(5) An officer may at any time enter a customs approved area and inspect it and any buildings and goods in it.

(6) Goods imported through the tunnel or to be exported through the tunnel shall not be unloaded from the importing vehicle or loaded onto the exporting vehicle except at a customs approved area.

(7) Any person contravening or failing to comply with paragraph (6) above or with any condition or restriction imposed by the Commissioners under paragraph (1) above shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

### **Modification of the Act of 1979**

4. The Act of 1979 shall be modified in accordance with the provisions of the Schedule to this Order.

### **Time of importation, exportation etc.**

5.—(1) The provisions of this article shall have effect for the purposes of the customs and excise Acts.

(2) Paragraph (3) below shall apply to any goods brought through the tunnel before the date certified by order in accordance with section 10(8) of the Act of 1987 as the date on which the English section effectively joins the French section.

(3) The time of importation of any goods to which this paragraph applies shall be deemed to be the time when they enter the English section.

(4) Subject to paragraph (3) above, the time of importation of any goods brought through the tunnel shall be deemed to be the time when they cross the frontier.

(5) Subject to paragraph (6) below, where any goods are exported through the tunnel the time of exportation of any goods so exported shall be deemed to be the time when they are loaded onto the exporting vehicle.

(6) In the case of goods of a class or description with respect to the exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment and which are exported by vehicle through the tunnel, the time of exportation shall be deemed to be the time when the exporting vehicle departs from the last customs approved area at which goods were loaded onto it for exportation.

(7) In this article the following expressions have the meanings assigned to them by Section 10(2) of the Act of 1987:

“English section”;

“French section”.

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*Alexander W. Russell*  
Commissioner of Customs and Excise

1st November 1990

## SCHEDULE

Article 4

### MODIFICATIONS OF THE ACT OF 1979

#### PART III of the Act of 1979: Customs and Excise Control Areas

1. Sections 27(a) and 28(b) (officers' powers of boarding and access, etc.) shall have effect as if a vehicle at, entering or leaving a customs approved area fell within paragraphs (a) to (f) of subsection (1) of section 27.

2. Section 29(3) (officers' powers of detention of ships, etc.) shall have effect as if any vehicle that has arrived from France through the tunnel were a vehicle in Northern Ireland.

3. For the purposes of section 30(1) (control of movement of uncleared goods within or between port or airport and other places) a customs approved area shall be treated as being within the limits of a port, whether or not it is.

4. In section 32(1)(c) (penalty for carrying away officers) the reference to a vehicle which crosses the boundary out of Northern Ireland shall be construed as including a reference to a vehicle which departs from a customs approved area.

#### PART IV of the Act of 1979: Control of Importation

5.—(1) Section 35(1) (report inwards) shall have effect as if any vehicle entering the United Kingdom through the tunnel were a vehicle entering Northern Ireland by land.

(2) For the purposes of section 35(7)(d) any vehicle which arrives in the United Kingdom through the tunnel shall be treated as a vehicle which has crossed the boundary into Northern Ireland.

6. In section 42(1)(a) (power to regulate the unloading, removal, etc. of imported goods) the reference to a ship arriving at a port shall be construed as including a reference to a vehicle arriving at a customs approved area through the tunnel from France.

7. In section 49(1) (forfeiture of goods improperly imported) the references to goods which are unloaded from or which are found to have been concealed on board any aircraft shall be construed respectively as including goods which are unloaded from or which are found to have been

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- (a) Section 27(1) was amended by the Finance Act 1983 (c.28), section 7(4) and by the Finance Act 1987 (c.16), section 7(1). The provision as to penalty in section 27(2) was amended in its application to England and Wales by the Criminal Justice Act 1982 (c.48), section 46; in its application to Scotland by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289G (which was inserted by the Criminal Justice Act 1982, section 54); and in its application to Northern Ireland by S.I. 1984/703 (N.I.3). The amounts of the penalties on the levels of the standard scale have been increased most recently by S.I. 1984/447, 526 and S.R. (N.I.) 1984 No. 253.
- (b) Section 28(1) was amended by the Finance Act 1987 (c.16), section 7(2).
- (c) The provision as to penalty in section 32(1) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.
- (d) Section 35(7) was amended by the Territorial Sea Act 1987 (c.49), section 3(1) and paragraph 4(2) of Schedule 1.

concealed on board any vehicle which has brought them into the United Kingdom through the tunnel.

8. Section 50(2) (penalty for improper importation of goods) shall have effect as if—
- (a) any person who unloads or assists or is otherwise concerned in the unloading of those goods mentioned in section 50(1) from any vehicle which has arrived from France through the tunnel were a person who unships such goods in a port; and
  - (b) any person who removes or assists or is otherwise concerned in the removal of such goods from any customs approved area were a person who removes such goods from an approved wharf.

#### PART V of the Act of 1979: Control of Exportation

9. In sections 53(a) (entry outwards of goods), 58D(b) (operative date for Community purposes) and 58E(c) (authentication of Community customs documentation) any reference to goods shipped or shipped for exportation shall be construed as including a reference to goods loaded onto a vehicle for exportation through the tunnel.

10.—(1) Section 56(1)(d) (failure to export) shall have effect as if goods in respect of which an entry has been accepted and which have not been loaded onto a vehicle for exportation through the tunnel were goods in respect of which an entry has been accepted and which have not been shipped.

(2) Section 56(2) shall have effect as if goods in respect of which paragraphs (a) and (b) of that section apply include goods—

- (a) in respect of which an entry has been accepted;
- (b) which are due to be loaded for exportation through the tunnel onto a vehicle specified in the entry or by the person having charge of them at the customs approved area of intended loading;
- (c) in respect of which no notice has been served under section 56(1); and
- (d) which have not been loaded by the time the vehicle departs from the customs approved area at which it has been cleared for departure.

11.—(1) In section 57(1)(e) (delivery of entry by owner of exporting ship, etc.) the reference to goods which are to be exported in an aircraft shall be construed as including a reference to goods which are to be exported through the tunnel in a vehicle and the reference to the owner of the aircraft shall be construed as including a reference to the owner or person in charge of the vehicle.

(2) For the purposes of section 57(4) a vehicle shall be treated as an aircraft.

12.—(1) Subject to subparagraph (2) below, section 58C(3)(f) (export of ships and aircraft) shall have effect as if a vehicle departing on a journey from the United Kingdom through the tunnel were a ship departing for a voyage from the United Kingdom and the reference to the owner of the ship shall be construed as including a reference to the owner of the vehicle.

(2) In its application to a vehicle so departing section 58C(3) shall have effect as if the words "or, where" to "aircraft" had not been enacted.

13. Section 64(1), (6) and (7)(g) (clearance outwards of ships and aircraft) shall have effect as if a vehicle departing from a customs approved area on a journey to an eventual destination outside the United Kingdom through the tunnel were an aircraft departing from a customs and excise airport on a flight to an eventual destination outside the United Kingdom and Isle of Man and—

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- (a) Section 53 was replaced by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7. Section 53(9) was subsequently amended by the Finance Act 1988 (c.39), section 12(1)(a). The provisions as to penalty in section 53(10) and (11) were amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.
  - (b) Section 58D was inserted by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7; subsection 2 was amended by the Finance Act 1987 (c.16), section 8(4).
  - (c) Section 58E was inserted by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7. The provision as to penalty in section 58E(5) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.
  - (d) Section 56 was replaced by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7.
  - (e) Section 57 was replaced by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7.
  - (f) Section 58C was inserted by the Finance Act 1981 (c.35), section 10(2) and Part I of Schedule 7.
  - (g) Section 64(1) was amended by the Isle of Man Act 1979 (c.58), section 13, and paragraph 13 of Schedule 1. The provision as to penalty in section 64(6) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.

- (a) the reference in subsection (6) to the commander of an aircraft shall be construed as including a reference to the person in charge of a vehicle;
- (b) for the purposes of subsection (7) goods loaded onto such a vehicle shall be treated as goods loaded into an aircraft.

14.—(1) Section 65(1) (power to refuse or cancel clearance of ship or aircraft) shall have effect as if a vehicle departing to France through the tunnel were an aircraft and the reference in paragraph (b) of that section to a customs and excise airport shall be construed as including a reference to a customs approved area.

(2) In section 65(2) and (3)(a) any reference to the commander of an aircraft shall be construed as including a reference to the person in charge of a vehicle and for the purposes of subsection (2) a written demand left on board a vehicle with the person appearing to be in charge thereof shall be treated as left on board an aircraft with the person appearing to be in charge thereof.

15. In section 66(1)(b) (power to make regulations as to exportation, etc.) the reference to aircraft shall be construed as including a reference to vehicles leaving the United Kingdom through the tunnel.

16. Section 67(1) (offences in relation to exportation of goods) shall have effect as if goods which have been loaded or retained on any vehicle for exportation through the tunnel were goods loaded or retained on board an aircraft for exportation and the references to the aircraft and to the commander of the aircraft shall be construed respectively as including references to the vehicle and to the person in charge of the vehicle.

#### PART VII of the Act of 1979: Customs and Excise Control: Supplementary Provisions

17. In section 75(1) (explosives) the reference to goods loaded into a ship for exportation shall be construed as including a reference to goods loaded onto a vehicle for exportation through the tunnel.

18. In section 84(2)(c) (penalty for signalling to smugglers) any reference to a ship shall be construed as including a reference to a vehicle anywhere within the tunnel system (whether in England or in France).

19. For the purposes of section 88(d) (forfeiture of ship, aircraft or vehicle constructed, etc. for concealing goods) a vehicle which is or has been in a customs approved area, whether or not such area is within the limits of a port, shall be treated as if it is or has been within the limits of a port.

#### PART X of the Act of 1979: Duties and Drawbacks—General Provisions

20. Section 134 (drawback and allowance on goods damaged or destroyed after shipment) shall have effect as if goods which have been loaded onto a vehicle for exportation through the tunnel were goods which had been shipped for exportation and as if such vehicle were an exporting ship.

#### PART XI of the Act of 1979: Detention of Persons, Forfeiture and Legal Proceedings

21. Section 141(3)(e) (forfeiture of ships, etc. used in connection with goods liable to forfeiture) shall have effect as if a vehicle which has been used in the importation, exportation or carriage of goods through the tunnel were an aircraft and the references to the owner and the commander of an aircraft shall be construed respectively as including references to the owner of a vehicle and the person in charge of it.

22. In section 146(1) (service of process) the reference in paragraph (c) to an aircraft shall be

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- (a) The provision as to penalty in section 65(3) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.
  - (b) Section 66(1) was amended by the Isle of Man Act 1979 (c.58), section 13, and paragraph 14 of Schedule 1.
  - (c) The provision as to penalty in section 84(2) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.
  - (d) Section 88 was amended by the Territorial Sea Act 1987 (c.49), section 3(1) and paragraph 4(3) of Schedule 1.
  - (e) The provision as to penalty in section 141(3) was amended by those provisions which amended the provision as to penalty in section 27(2) and which are specified in footnote (a) to paragraph 1 of this Schedule.

construed as including a reference to a vehicle which has arrived from or is departing to France through the tunnel.

23. In section 154(2) (proof of certain other matters) any reference to goods loaded or to be loaded into or unloaded from an aircraft shall be construed respectively as including references to goods loaded or to be loaded onto or unloaded from a vehicle which is departing to or has arrived from France through the tunnel.

24. In section 159(1)(a) (power to examine and take account of goods) the reference in paragraph (c) to goods which have been loaded into a ship shall be construed as including a reference to goods which have been loaded onto a vehicle for exportation through the tunnel.

25. Section 164(b) (search of persons) shall apply to any person in, entering or leaving a customs approved area.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

The effect of this Order is to make such additional provision as is considered necessary or expedient for customs and excise control consequent upon the establishment of a tunnel link between the United Kingdom and France.

Article 3 permits the Commissioners of Customs and Excise to approve one or more areas ('customs approved areas') for the purpose of such controls and to impose conditions and restrictions in respect of any such area. It also—

- (a) allows an officer of Customs and Excise to enter such area and inspect it and any buildings and goods in it,
- (b) requires that the unloading of goods imported through the tunnel and the loading of goods to be exported through the tunnel may take place only in such an area, and
- (c) makes it an offence, triable summarily, to contravene or fail to comply with the provisions of this article as to the loading and unloading of goods or any conditions and restrictions imposed under it.

Article 4 and the Schedule modify certain sections of the Customs and Excise Management Act 1979 to adapt them to the circumstances of the tunnel.

Article 5 makes provision, in respect of goods imported and exported through the tunnel, as to the time when such importation and exportation is to be treated as having occurred.

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- (a) Section 159(1) was amended by the Isle of Man Act 1979 (c.58), section 13 and paragraph 22 of Schedule 1; and by the Finance Act 1984 (c.43), section 8 and paragraph 5 of Part II of Schedule 4.
  - (b) Section 164 was amended by the Isle of Man Act 1979 (c.58), section 13 and paragraph 6 of Schedule 1; the Finance Act 1984 (c.43), section 8 and paragraph 6 of Part II of Schedule 4; and by the Finance Act 1988 (c.39), section 10.