

Act on Penalties for Smuggling

Swedish Code of Statutes
SFS 2000:1225

Unofficial translation of: Lagen om straff för smuggling

Promulgated 30 November 2000

Including amendments up to SFS 2000:1324

General provisions

Section 1 This Act contains provisions on liability, etc. for acts relating to the import into or export from Sweden of goods. Where by statute or other enactment a penalty has been prescribed for a person who contravenes a prohibition against or conditions for bringing in or taking out goods, the provisions of that enactment shall apply unless otherwise prescribed.

Sections 19-22, 26, 27 and 32 contain special provisions concerning powers to prevent, investigate and prosecute offences in accordance with this Act or offences, which relate to the import into or export from Sweden of goods, in accordance with any of the enactments referred to in the third paragraph. These powers also apply in connection with such offences under the Penal Law on Narcotics (1968:64) as referred to in Section 12, third paragraph. Powers to institute proceedings or decide on forfeiture in accordance with Section 32 do not apply to offences under the Penal Law on Narcotics.

The enactments referred to in the second paragraph are the Prohibition in Certain Cases of Import of Alcoholic Beverages Act (1960:419), the Taxation of Certain Private Imports Act (1994:1565), the Customs Administration's powers at Swedish borders with other EU Member States Act (1996:701), the Excise duty control of transport, etc. of alcoholic goods, tobacco goods and mineral oil products Act (1998:506), the Control of products with duplicate areas of application and of technical assistance Act (2000:1064) and also the Customs Act (2000:1281). (Act 2000:1324)

Section 2 When applying this Act, goods shall be deemed to have been brought into or taken out of Sweden when they have been conveyed across the border of Swedish territory.

In this Act

1. narcotics: means such goods as are referred to in Section 8 of the Penal Law on Narcotics (1968:64), and

2. customs clearance: means that which is prescribed in the customs legislation concerning goods being stored at a temporary storage facility or being the subject to approved customs clearance or measures in accordance with Chapter 3, Section 4 of the Customs Act (2000:1281), when the goods are brought into or taken out of Sweden.

Penal provisions, etc.

Smuggling offence

Section 3 A person who in connection with the import into Sweden of goods that are subject to a specific prohibition against or condition for import, intentionally contravenes the prohibition or condition by failing to report the goods for customs clearance, shall be sentenced for smuggling to a fine or imprisonment for at most two years.

That which is prescribed in the first paragraph also applies to a person who, in connection with such goods being brought into Sweden, intentionally provides incorrect information in

conjunction with customs clearance or fails to provide the prescribed information in connection with customs clearance and thereby causes a risk that the importation is completed in contravention of the prohibition or condition.

A person shall also be sentenced for smuggling if he intentionally

1. takes out goods from Sweden in contravention of a specific prohibition against or condition for export or following export has control of the goods in contravention of the prohibition or condition,

2. during a pending customs clearance disposes of goods subject to a specific prohibition against or condition for import and thereby causes the importation to be completed in contravention of the prohibition or condition,

3. brings into Sweden or takes out of Sweden goods pursuant to a licence that has been granted owing to someone providing incorrect information or failing to provide the prescribed information to a licensing authority or proceeds in such a way at a licensing authority and thereby causes a licence to be granted and the goods to be brought into or taken out of Sweden pursuant to the licence, or

4. disposes of goods in contravention of a condition that has been prescribed for or in conjunction with the import or export of the goods.

In those cases where the provisions concerning customs clearance are not applicable in connection with import from or export to another EU country, that which is stated in the first and second paragraphs regarding customs clearance shall apply instead to the procedure under the Custom Administration's powers at Swedish borders with other EU Member States Act (1996:701).

Section 4 Should an offence referred to in Section 3 be judged to be petty, a fine shall be imposed.

Section 5 Should an offence referred to in Section 3 be judged to be grave, a sentence shall be imposed for grave smuggling to imprisonment for at least six months and at most six years.

When assessing whether an offence is grave, particular consideration shall be given to whether the act formed part of a step in criminality that has been exercised systematically or on a large scale, whether the act having regard to the circumstances surrounding the import, export or control, was of a particularly dangerous nature, or if the act otherwise involved a serious violation of an important public interest.

Section 6 Where an act referred to in Section 3 relates to narcotics, a sentence of imprisonment for at most three years shall be imposed for narcotics smuggling.

Should the offence be petty, fines or imprisonment for at most six months shall be imposed.

Should the offence be judged to be grave, a sentence of imprisonment shall be imposed for smuggling of narcotics of at least two and at most ten years. Particular consideration shall be given to whether the act related to a particularly large quantity of narcotics, whether the act formed part of a step in an activity that was conducted on a large scale or professionally, or whether the activity or act was otherwise of a particularly dangerous or unscrupulous nature.

Section 7 A person who commits an act referred to in Section 3 or 6 by gross negligence shall be sentenced for unlawful import or unlawful export to a fine or imprisonment for at most two years.

A sentence shall also be imposed for unlawful import or unlawful export on a person who by gross negligence

1. in conjunction with the export of goods from Sweden fails to declare the goods for customs clearance, provides incorrect information in connection with customs clearance or fails to

provide the prescribed information in connection with customs clearance and thereby causes a risk that such prohibition or condition as referred to in Section 3, third paragraph, item 1 or that provision together with Section 6 is contravened, or

2. provides incorrect information or fails to provide the prescribed information in conjunction with an application for such a licence as referred to in Section 3, third paragraph, item 3 or that provision together with Section 6 and thereby causes a risk that the goods will be brought into or taken out pursuant to such licence.

In those cases where the provisions on customs clearance are not applicable in connection with export to another EU country, that which is prescribed in the second paragraph of item 1 regarding customs clearance shall apply instead to the procedure under the Customs Administration's powers at Swedish borders with other EU Member States Act (1996:701).

If the act is petty, it does not carry liability.

Customs offences, etc.

Section 8 A person who, in conjunction with goods being brought into Sweden, intentionally fails to declare the goods for customs clearance, provides incorrect information in connection with customs clearance or fails to provide the prescribed information in connection with customs clearance and thereby causes a risk that customs duties, other taxes or charges are avoided shall be sentenced for customs offence to a fine or imprisonment for at most two years.

A person shall also be sentenced for customs offence if he intentionally causes a risk that customs duties, other taxes or charges are avoided or incorrectly credited or repaid to him personally or to another by,

1. in conjunction with goods being taken out of Sweden, proceeding as referred to in the first paragraph or, after the export, disposing of the goods in contravention of the preconditions applicable for the customs clearance that took place in connection with the export,

2. during pending customs clearance, disposing of the goods imported in contravention of the rules applicable for such customs clearance, or

3. contravening conditions that in connection with customs clearance for release for free circulation have been imposed for release from or reduction of the tax or charge.

This provision is applicable only as regards such customs duties, other taxes and charges as are to be determined by the Customs Administration.

Section 9 Should an offence referred to in Section 8 be judged to be petty, a monetary fine shall be imposed.

Section 10 Should an offence referred to in Section 8 be judged to be grave, a sentence shall be imposed for grave customs offence of imprisonment for at least six months and at most six years.

When assessing whether the offence is grave, particular consideration shall be given to whether the act involved very substantial amounts, whether the perpetrator made use of false documents or misleading bookkeeping, whether the act was a step in criminality that has been exercised systematically or on a large scale or whether the act was otherwise of a particularly dangerous nature.

Section 11 A person who commits an act referred to in Section 8 by gross negligence shall be sentenced for negligent customs declaration to a fine or imprisonment for at most two years.

Where the act is petty it shall not carry liability.

Unlawful dealing with smuggled goods

Section 12 A person who intentionally packages, transports, stores, conceals, processes, acquires, transfers or enters into a contract for the grant of a pledge in goods that were the subject of an offence in accordance with Sections 3-11, shall be sentenced for unlawful dealing with smuggled goods to a fine or imprisonment of at most two years. The act shall not carry liability if it is petty having regard to the dealing, circumstances concerning this, the nature or value of the property and other circumstances.

Where the perpetrator does not realise but has reasonable cause to assume that the goods were the subject of an offence, a sentence of a fine shall be imposed. If the act is petty, it shall not carry liability.

Liability in accordance with the first or second paragraph shall not be imposed if the act is subject to a penalty in accordance with Section 1, first paragraph, item 1, 3 or 4 of the Penal Law on Narcotics (1968:64) or Section 3 a of the Penal Law on Narcotics together with these provisions.

Section 13 Should an offence referred to in Section 12, first paragraph be judged to be grave, a sentence shall be imposed for grave unlawful dealing with smuggled goods to imprisonment, of at least six months and at most six years.

When assessing whether the offence is grave, particular consideration shall be given to whether the act formed part of criminality that has been exercised systematically or on a large scale, whether the act related to the dealing with goods that were the subject of an offence whereby customs duties, other taxes or charges of a very substantial amount have been avoided or improperly repaid or credited to someone or whether the act was otherwise of a particularly dangerous nature.

Attempt, preparation and conspiracy

Section 14 For attempted smuggling, narcotics smuggling or customs offence and for attempt, preparation and conspiracy to grave smuggling, grave narcotics smuggling, grave customs offence or grave unlawful dealing with smuggled goods, liability shall be imposed in accordance with Section 23 of the Penal Code. The same also applies to preparation of narcotics smuggling and conspiracy to such narcotics smuggling that is not to be judged as petty.

Voluntary rectification

Section 15 A person who voluntarily avoids such a risk as referred to in Section 3, second paragraph or Section 6 together with that provision or Section 7, shall not be sentenced as liable under that provision. A person who voluntarily implements a measure that results in customs duties, other taxes or charges as referred to in Sections 8-11 being imposed, credited or repaid at the correct amount, shall not be sentenced as liable in accordance with Sections 8-13.

Forfeiture

Section 16 Unless it is manifestly unreasonable, the following property shall be declared forfeited:

1. goods that were the subject of an offence under this Act or the value of such goods,
2. the gains of an offence under this Act, and
3. that which someone has received as compensation for expenses in conjunction with an offence under this Act, or the value of that received, if the receipt constitutes an offence under this Act.

Goods as referred to in the first paragraph, item 1, or a special right to the goods may not be declared forfeited if the goods or right have been acquired after the offence by someone who

was not aware of nor had reasonable cause to assume the link of the property with the offence. On forfeiture of goods in accordance with the first paragraph, item 1, the provisions contained in Chapter 36, Section 5, first and second paragraphs of the Penal Code, regarding the persons against whom forfeiture may be executed, shall not apply.

Section 17 Property that has been used as an aid in the commission of an offence under this Act may be declared forfeited if the forfeiture is necessary to prevent an offence under this Act or if there are otherwise special reasons to do so. Instead of the property, its value may be declared forfeited. Chapter 36, Section 5 of the Penal Code contains provisions regarding the persons against whom forfeiture may be executed and concerning special rights to forfeited property.

Instead of forfeiture of the property or its value, the court may prescribe that some measure is taken with the property that prevents continued misuse of it. However, in such a case, a part of the value of the property may also be declared forfeited.

Section 18 When a decision concerning forfeiture of property has entered into final legal force, the property shall be sold through the agency of the Customs Administration or by the procedure generally applicable for sale of forfeited personal chattels. The property may instead be destroyed if

1. it cannot be sold,
2. there is a risk that it will be used for criminal activities, or
3. it is otherwise unsuitable for sale.

That which is prescribed in the first paragraph only applies if nothing else is prescribed by statute or other enactment.

Where instead of the property its value has been declared forfeited and if the amount determined has been paid within two months from the date when the decision for forfeiture entered into final legal force, the property shall be surrendered to the owner. If the amount has not been paid within this period, the property may be sold in accordance with that which is prescribed in the first and second paragraphs and the amount determined deducted from the proceeds received. If there is a surplus, after the costs of sale have been deducted, it shall be paid to the owner or some other holder of rights.

Preliminary investigation and compulsory measures

Preliminary investigation, etc.

Section 19 The Customs Administration may make a decision to commence a preliminary investigation in accordance with Chapter 23 of the Code of Judicial Procedure regarding offences under this Act or other offences referred to in Section 1, second paragraph. The powers and obligations that the investigation leader has under the Code of Judicial Procedure apply in such a case to the Customs Administration. The Customs Administration shall appoint special officers within the Administration, who are to perform these functions of the Administration.

If the matter is not of a simple nature, the conduct of the preliminary investigation shall be taken over by a prosecutor as soon as anyone may reasonably be suspected of having committed an offence. The prosecutor should also otherwise take over the leadership, if this is called for by special reasons.

When a preliminary investigation is conducted by a prosecutor, the prosecutor may engage the assistance of the Customs Administration. The prosecutor may also assign officers at the Administration to take a particular measure associated with the preliminary investigation, if this is appropriate having regard to the nature of the particular measures.

Section 20 Before it has been possible to commence a preliminary investigation, an officer at the Customs Administration or Coast Guard, in accordance with that which is prescribed by Chapter 23, Section 3, third paragraph of the Code of Judicial Procedure, may hold questionings

and implement other investigative measures that are of importance for the investigation of offences under this Act or other offences referred to in Section 1, second paragraph. The measures taken shall as soon as possible be reported to the person who is entitled to conduct the preliminary investigation relating to the offence.

That which is prescribed in Chapter 23, Section 8 of the Code of Judicial Procedure concerning powers for police officers to order someone to accompany them for questioning and to take someone to questioning also applies for officers at the Customs Administration or Coast Guard when investigating offences under this Act or other offences referred to in Section 1, second paragraph.

Apprehension

Section 21 An officer at the Customs Administration or Coast Guard has the same powers as a police officer, in accordance with Chapter 24, Section 7, first paragraph of the Code of Judicial Procedure, to apprehend a person suspected of committing an offence under this Act or other offences referred to in Section 1, second paragraph. That which is prescribed in the Code of Judicial Procedure concerning powers and obligations in relation to the person apprehended apply to the officer to the same extent as they apply to a police officer and also to the Customs Administration to the same extent as they apply to a police authority.

Seizure

Section 22 An officer at the Customs Administration or Coast Guard has, as regards offences under this Act or other offences referred to in Section 1, second paragraph, the same powers as a police officer to seize property, in accordance with Chapter 27, Section 4 of the Code of Judicial Procedure.

An officer at the Customs Administration or Coast Guard or a police officer may also seize property in cases other than those referred to in Chapter 27, Section 4 of the Code of Judicial Procedure, if it may reasonably be assumed that the property will be forfeited owing to an offence under this Act or other offences as referred to in Section 1, second paragraph.

Where a seizure is executed by someone other than the preliminary investigation leader or the prosecutor and the latter has not decided on the seizure, a report shall be expeditiously submitted to the preliminary investigation leader or prosecutor upon which he shall immediately consider whether the seizure should remain in force.

Section 23 Seized property shall be stored by the Customs Administration unless otherwise is prescribed or the prosecutor otherwise decides.

Section 24 An authority, which has the care of property that has been seized because it may reasonably be assumed that it will be forfeited in accordance with Section 16, may sell the property immediately if

1. it cannot be cared for without a risk of it being destroyed,
2. the care of it entails excessive expense, or
3. there are otherwise special reasons.

Such property may instead be destroyed, if

1. it cannot be sold
2. it may be feared that it will be used for criminal activities, or
3. it is otherwise unsuitable for sale.

Where property, which has been sold or destroyed, is not forfeited, the owner or other holder of rights is entitled to compensation. However, compensation is not paid for property that has

been sold at a greater amount than the proceeds of the sale. If the property has been destroyed, compensation is provided in a reasonable amount.

That which is prescribed by the first and second paragraphs only applies if not otherwise prescribed by statute or other enactment.

Section 25 Property that has been seized in accordance with this Act and which is stored by a party other than the Customs Administration shall be transferred to the Administration, if the seizure is revoked and the property is to become the object of

1. customs clearance, or
2. some measure under the Customs Administration's powers at Swedish borders with other EU Member States Act (1996:701).

If the property has already been sold, the purchase price shall be transferred to the Customs Administration for report.

Search of premises

Section 26 An officer at the Customs Administration or Coast Guard has, as regards offences under this Act or other offences referred to in Section 1, second paragraph, the same powers as a police officer, in accordance with Chapter 28, Section 5 of the Code of Judicial Procedure, to conduct a search of premises without an order under Chapter 28, Section 4 of the Code of Judicial Procedure.

If there is reason to assume that offences under this Act or other offences referred to in Section 1, second paragraph have been committed, a search of premises may also be made in cases other than those referred to in Chapter 28, Section 1 of the Code of Judicial Procedure in a warehouse or similar space in order to search for property that it may reasonably be assumed will be forfeited owing to such an offence. The search of premises under this paragraph may be made by an officer at the Customs Administration or Coast Guard or by a police officer. Such an officer or a police officer may, in accordance with Chapter 28, Section 5 of the Code of Judicial Procedure, conduct this search of premises without an order under Chapter 28, Section 4 of the Code of Judicial Procedure.

Body search and body examination, etc.

Section 27 An officer at the Customs Administration or Coast Guard has, as regards offences under this Act or other offences referred to in Section 1, second paragraph, the same powers as a police officer, in accordance with Chapter 28, Section 13 of the Code of Judicial Procedure to decide on body search and body examination without an order in accordance with Chapter 28, Sections 4 and 13 of the Code of Judicial Procedure.

If there is reason to assume that a person, in immediate connection with entry into or exit from Sweden and remaining in the areas adjacent to Swedish land borders or coasts or in the proximity of or within an airport or some other similar area that has a direct link with abroad, has with him or her property that can be seized owing to an offence under this Act or such offence under the Penal Law on Narcotics (1968:64) as referred to in Section 12, third paragraph, a body search, surface body examination or taking a urine sample may be performed on him or her. A surface body examination may only be performed on a person under the age of 15 if there are special reasons to do so. No one may be held in custody for taking a urine sample. Measures under this paragraph may be decided by an officer at the Customs Administration or Coast Guard. Such an officer may decide on measures without an order in accordance with Chapter 28, Sections 4 and 13 of the Code of Judicial Procedure.

An officer at the Customs Administration or Coast Guard, who pursuant to this Act intervenes against someone, may in conjunction with the intervention, to the extent that is necessary for security reasons,

1. take care of weapons or other dangerous objects while the intervention progresses, and
2. conduct a body search of the person in order to take care of such objects.

Section 28 The Customs Administration may decide on body search of every traveller who with a particular means of transport or during a particular specified, short period of time arrives at or departs from a particular border or coastal district or other place that has a link with abroad (special control).

Such a special control may be decided only if

1. there is cause to assume that one or more travellers, who with the means of transport or during the period of time arrives at or departs from the place, has committed or is about to commit an offence under Section 5 or Section 6, third paragraph or attempt such an offence,
2. sufficient information is absent to direct suspicion against a particular person or a small group of persons, and
3. the measure is necessary in order to implement an intervention against the crime.

A decision concerning a special control may be taken by the director of a customs region. The decision shall be considered by the Head of the Customs Administration or the person he appoints in his place. If there is obviously a risk of delay, the decision may be executed immediately without such consideration.

Section 29 Body search that is of a more extensive scope and body examination shall be performed indoors in a private room or in an appropriate place in the means of transport and, if the examining officer or the person examined so requests and it can take place without great inconvenience, in the presence of witnesses. Body search and body examination of females may not be performed or witnessed by persons other than a female, physician or accredited nurse.

Records shall be kept and a certificate issued concerning body search or body examination performed, if the person examined so requests at the execution or if an object is seized.

Requirements regarding competence

Section 30 Decisions on the use of compulsory measures may only be made by an officer at the Customs Administration or Coast Guard who holds an office that carries such powers and who has undergone the necessary training for the purpose. The same also applies to the enforcement of decisions concerning the use of compulsory measures.

Prosecution and actions or decisions concerning forfeiture

Section 31 Can an offence as referred to in

1. Section 3 or 4 or an attempt to commit such an offence or Section 7 may result in the imposition of such a charge as is referred to in Section 3 of the Powers to make regulations on the importation or exportation of goods Act (1975:85), or

2. Section 8 or 9 or attempt to commit such an offence or Section 11 may result in the imposition of a customs duty supplement in accordance with Chapter 8, Sections 2-4 of the Customs Act (2000:128)

prosecution for the offence may only be instituted if called for owing to special reasons.

That which is stated in the first paragraph also applies to actions for forfeiture in accordance with Section 16.

Section 32 Where cases concerning offences under this Act or other offences as referred to in Section 1, second paragraph, an action may be brought by a specially appointed officer at the Customs Administration, if it is manifest that the penal value of the offence would be covered by a fine and that the offence will not result in any other sanction. Such an officer may also make a decision in accordance with Section 3, fourth paragraph of the Forfeiture Procedure (Special Cases), etc. Act (1986:1009).

The provisions of the first paragraph do not limit a public prosecutor's powers to prosecute.

Section 33 If the owner of goods, which may be forfeited in accordance with Section 16, first paragraph, item 1, cannot be served with a summons in the manner prescribed for service in criminal cases, an action concerning property other than the means of transport is brought against the person with whom the goods were found. Means of transport means motor-powered vehicle and associated trailer vehicles together with vessels and aircraft.

Transitional provisions

2000:1225

1. This Act enters into force on 1 January 2001, when the Law on Penalties for Smuggling (1960:418) shall cease to apply.

2. A person who after the Act has entered into force takes such dealing as referred to in Section 12 or 13 of goods that were the subject of smuggling of goods under the Law on the Law on Penalties for Smuggling (1960:418) shall be found liable in accordance with Section 12 or 13.

3. As regards goods that were the subject of smuggling of goods or attempted smuggling of goods in accordance with the Law on Penalties for Smuggling (1960:418), that which is prescribed in that Act shall apply concerning forfeiture. However, the provisions of this act concerning forfeiture shall apply if this would result in a less stringent assessment.

4. The provisions of Sections 19-22 and Sections 24-27 concerning measures in connection with offences under this Act shall also apply as regards offences under the Law on Penalties for Smuggling (1960:418).

5. As regards prosecution for offences against the Law on Penalties for Smuggling (1960:418) and on matters concerning forfeiture as a consequence of such an offence, Sections 20, 23 a and 24 of that act shall still apply.