

Anti-terrorism, Crime and Security Act 2001

2001 Chapter 24 - *continued*

PART 6

WEAPONS OF MASS DESTRUCTION

*Amendment of the Biological Weapons Act 1974 and
the Chemical Weapons Act 1996*

43 Transfers of biological agents and toxins

In section 1 of the Biological Weapons Act 1974 (c. 6) (restriction on development etc. of certain biological agents and toxins and of biological weapons), after subsection (1) insert-

"(1A) A person shall not-

(a) transfer any biological agent or toxin to another person or enter into an agreement to do so, or

(b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so,

if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case."

44 Extraterritorial application of biological weapons offences

After section 1 of the Biological Weapons Act 1974 insert-

"1A Extraterritorial application of section 1

(1) Section 1 applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(2) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

(3) Her Majesty may by Order in Council extend the application of section 1, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

(4) In this section "United Kingdom person" means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.

(5) For this purpose a United Kingdom national is an individual who is-

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

(6) Nothing in this section affects any criminal liability arising otherwise than under this section."

45 Customs and Excise prosecutions for biological weapons offences

Before section 2 of the Biological Weapons Act 1974 (c. 6) insert-

"1B Customs and Excise prosecutions

(1) Proceedings for a biological weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved-

(a) the development or production outside the United Kingdom of any thing mentioned in section 1(1)(a) or (b) above;

(b) the movement of any such thing into or out of any country or territory;

(c) any proposal or attempt to do anything falling within paragraph (a) or (b) above.

(2) In this section "biological weapons offence" means an offence under section 1 of this Act or section 50 of the Anti-terrorism, Crime and Security Act 2001 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence).

(3) Any proceedings for an offence which are instituted under subsection (1) above shall be commenced in the name of an officer, but may be continued by another officer.

(4) 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 a biological weapons offence has been committed, or

(b) whether a person should be prosecuted for such an offence,

that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.

(5) Nothing in this section affects any power of any person (including any officer) apart from this section.

(6) In this section "officer" means a person commissioned by the Commissioners of Customs and Excise.

(7) This section does not apply to the institution of proceedings in Scotland."

46 Customs and Excise prosecutions for chemical weapons offences

Before section 31 of the Chemical Weapons Act 1996
(c. 6) insert-

"30A Customs and Excise prosecutions

(1) Proceedings for a chemical weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved-

- (a) the development or production outside the United Kingdom of a chemical weapon;
- (b) the movement of a chemical weapon into or out of any country or territory;
- (c) any proposal or attempt to do anything falling within paragraph (a) or (b).

(2) In this section "chemical weapons offence" means an offence under section 2 above or section 50 of the Anti-terrorism, Crime and Security Act 2001 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence).

(3) Any proceedings for an offence which are instituted under subsection (1) shall be commenced in the name of an officer, but may be continued by another officer.

(4) 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 a chemical weapons offence has been committed, or

(b) whether a person should be prosecuted for such an offence,

that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.

(5) Nothing in this section affects any power of any person (including any officer) apart from this section.

(6) In this section "officer" means a person commissioned by the Commissioners of Customs and Excise.

(7) This section does not apply to the institution of proceedings in Scotland."

Nuclear weapons

47 Use etc. of nuclear weapons

(1) A person who-

(a) knowingly causes a nuclear weapon explosion;

(b) develops or produces, or participates in the development or production of, a nuclear weapon;

(c) has a nuclear weapon in his possession;

(d) participates in the transfer of a nuclear weapon; or

(e) engages in military preparations, or in preparations of a military nature, intending to use, or threaten to use, a nuclear weapon,

is guilty of an offence.

(2) Subsection (1) has effect subject to the exceptions and defences in sections 48 and 49.

(3) For the purposes of subsection (1)(b) a person participates in the development or production of a nuclear weapon if he does any act which-

(a) facilitates the development by another of the capability to produce or use a nuclear weapon, or

(b) facilitates the making by another of a nuclear weapon,

knowing or having reason to believe that his act has (or will have) that effect.

(4) For the purposes of subsection (1)(d) a person participates in the transfer of a nuclear weapon if-

(a) he buys or otherwise acquires it or agrees with another to do so;

(b) he sells or otherwise disposes of it or agrees with another to do so; or

(c) he makes arrangements under which another person either acquires or disposes of it or agrees with a third person to do so.

(5) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) In this section "nuclear weapon" includes a nuclear explosive device that is not intended for use as a weapon.

(7) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(8) Nothing in subsection (7) affects any criminal liability arising otherwise than under that subsection.

(9) Paragraph (a) of subsection (1) shall cease to have effect on the coming into force of the Nuclear Explosions (Prohibition and Inspections) Act 1998 (c. 7).

48 Exceptions

(1) Nothing in section 47 applies-

(a) to an act which is authorised under subsection (2); or

(b) to an act done in the course of an armed conflict.

(2) The Secretary of State may-

(a) authorise any act which would otherwise contravene section 47 in such manner and on such terms as he thinks fit; and

(b) withdraw or vary any authorisation given under this subsection.

(3) Any question arising in proceedings for an offence under section 47 as to whether anything was done in the course of an armed conflict shall be determined by the Secretary of State.

(4) A certificate purporting to set out any such determination and to be signed by the Secretary of State shall be received in evidence in any such proceedings and shall be presumed to be so signed unless the contrary is shown.

49 Defences

(1) In proceedings for an offence under section 47(1)(c) or (d) relating to an object it is a defence for the accused to show that he did not know and had no reason to believe that the object was a nuclear weapon.

(2) But he shall be taken to have shown that fact if-

(a) sufficient evidence is adduced to raise an issue with respect to it; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

(3) In proceedings for such an offence it is also a defence for the accused to show that he knew or believed that the object was a nuclear weapon but, as soon as reasonably practicable after he first knew or believed that fact, he took all reasonable steps to inform the Secretary of State or a constable of his knowledge or belief.

Assisting or inducing weapons-related acts overseas

50 Assisting or inducing certain weapons-related acts overseas

(1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene any of the following provisions-

(a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins);

(b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons);
or

(c) section 47 above (offences relating to nuclear weapons).

(3) Nothing in this section applies to an act mentioned in subsection (1) which-

(a) relates to a relevant act which would contravene section 47; and

(b) is authorised by the Secretary of State;

and section 48(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section.

(4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

Supplemental provisions relating to sections 47 and 50

51 Extraterritorial application

(1) Proceedings for an offence committed under section 47 or 50 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the United Kingdom.

(2) Her Majesty may by Order in Council extend the application of section 47 or 50, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

52 Powers of entry

(1) If-

(a) a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 47 or 50 is to be found on any premises; or

(b) in Scotland the sheriff is satisfied by evidence on oath as mentioned in paragraph (a),

he may issue a warrant authorising an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) The powers of a person who enters the premises under the authority of the warrant include power-

(a) to take with him such other persons and such equipment as appear to him to be necessary;

(b) to inspect, seize and retain any substance, equipment or document found on the premises;

(c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form-

(i) in which he can read and copy it; or

(ii) from which it can readily be produced in a form in which he can read and copy it;

(d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 47 or 50.

(3) A constable who enters premises under the authority of a warrant or by virtue of subsection (2)(a) may-

(a) give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under this section; and

(b) search or cause to be searched any person on the premises who the constable has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under section 47 or 50.

(4) No constable shall search a person of the opposite sex.

(5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a constable.

(6) A person who-

(a) wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant under this section; or

(b) fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a constable for the purpose of facilitating the exercise of such a power,

is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable-

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(8) In this section "authorised officer" means an authorised officer of the Secretary of State.

53 Customs and Excise prosecutions

(1) Proceedings for a nuclear weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved-

(a) the development or production outside the United Kingdom of a nuclear weapon;

(b) the movement of a nuclear weapon into or out of any country or territory;

(c) any proposal or attempt to do anything falling within paragraph (a) or (b).

(2) In this section "nuclear weapons offence" means an offence under section 47 or 50 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence).

(3) Any proceedings for an offence which are instituted under subsection (1) shall be commenced in the name of an officer, but may be continued by another officer.

(4) 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 a nuclear weapons offence has been committed, or

(b) whether a person should be prosecuted for such an offence,

that matter shall be treated as an assigned matter

within the meaning of the Customs and Excise Management Act 1979 (c. 2).

(5) Nothing in this section affects any powers of any person (including any officer) apart from this section.

(6) In this section "officer" means a person commissioned by the Commissioners of Customs and Excise.

(7) This section does not apply to the institution of proceedings in Scotland.

54 Offences

(1) A person who knowingly or recklessly makes a false or misleading statement for the purpose of obtaining (or opposing the variation or withdrawal of) authorisation for the purposes of section 47 or 50 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable-

(a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(3) Where an offence under section 47, 50 or subsection (1) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of-

(a) a director, manager, secretary or other similar officer of the body corporate; or

(b) 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.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members,

means a member of the body corporate.

55 Consent to prosecutions

Proceedings for an offence under section 47 or 50 shall not be instituted-

(a) in England and Wales, except by or with the consent of the Attorney General;

(b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

56 Interpretation of Part 6

(1) In this Part "United Kingdom person" means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.

(2) For this purpose a United Kingdom national is an individual who is-

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

Extension of Part 6 to dependencies

57 Power to extend Part 6 to dependencies

Her Majesty may by Order in Council direct that any of the provisions of this Part shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man or to any British overseas territory.
