



**– National Legislation –**

**Implementation Kit for the  
Chemical Weapons Convention**

OPCW Technical Secretariat  
Office of the Legal Adviser  
Johan de Wittlaan 32  
2517 JR The Hague, The Netherlands  
+31 70 416 3779 [legal@opcw.org](mailto:legal@opcw.org)

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## **Legal Notice**

The provisions contained in this document are not meant as model provisions for inclusion in national drafts of legislation, but shall rather serve as illustration of how legal mechanisms on the national level can implement requirements of the Chemical Weapons Convention (CWC).

The Office of the Legal Adviser reminds users that the text of the CWC and decisions adopted thereunder by the Policy-Making Organs of the OPCW are the only authentic legal reference. The provisions in this document do not constitute legal advice. The OPCW does not accept any liability with regard to the contents of this document.

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## **1. Main CWC-related definitions**

### **1.1 Definition of “chemical weapon”**

“*Chemical weapon*” means the following, together or separately—

- (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;
- (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).<sup>2</sup>

### **1.2 Definition of “toxic chemical”**

- (1) “*Toxic chemical*” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.
- (2) The definition in paragraph (1) includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.<sup>3</sup>
- (3) Toxic chemicals which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]].

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<sup>1</sup> The aim of this document is to address issues possibly faced by all States Parties. Special considerations to be addressed by States Parties which have declared chemical weapons and are engaged in chemical weapons destruction activities are not covered here.

<sup>2</sup> As defined in Article II(1) of the Convention.

<sup>3</sup> As defined in Article II(2) of the Convention.

### 1.3 Definition of “precursor”

- (1) “*Precursor*” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.<sup>4</sup>
- (2) Precursors which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]].

### 1.4 Definition of “purposes not prohibited under the Convention”

“*Purposes not prohibited under the Convention*” means—

- (a) Industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
- (b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and
- (d) Law enforcement including domestic riot control purposes.<sup>5</sup>

### 1.5 Definition of “riot control agent”

“*Riot control agent*” means any chemical not listed in Schedule 1, 2 or 3, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.<sup>6</sup>

### 1.6 Definition of “chemical weapons production facility”

- (1) “*Chemical weapons production facility*” means any equipment, as well as any building housing such equipment, that was designed, constructed or used at any time since 1 January 1946:
  - (a) As part of the stage in the production of chemicals (“final technological stage”) where the material flows would contain, when the equipment is in operation:
    - (i) Any Schedule 1 chemical; or

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<sup>4</sup> As defined in Article II(3) of the Convention.

<sup>5</sup> As defined in Article II(9) of the Convention.

<sup>6</sup> As defined in Article II(7) of the Convention. The use of riot control agents as a method of warfare is prohibited by Article I(5) of the Convention. Such prohibition is criminalized in provision 6.5 of this Implementation Kit. It is also recalled that pursuant to Article III of the Convention, “Each State Party shall submit to the Organization, not later than 30 days after this Convention enters into force for it, [...] declarations [...] (e) With respect to riot control agents [...]. This declaration shall be updated not later than 30 days after any change becomes effective.”

- (ii) Any other chemical that has no use, above 1 tonne per year on the territory of [State Party] or in any other place under the jurisdiction or control of [State Party], for purposes not prohibited under this Convention, but can be used for chemical weapons purposes;

or

- (b) For filling chemical weapons, including, *inter alia*, the filling of Schedule 1 chemicals into munitions, devices or bulk storage containers; the filling of chemicals into containers that form part of assembled binary munitions and devices or into chemical submunitions that form part of assembled unitary munitions and devices, and the loading of the containers and chemical submunitions into the respective munitions and devices;
- (2) As an exception to paragraph (1) the term “chemical weapons production facility” does not include:
- (a) Any facility having a production capacity for synthesis of chemicals specified in paragraph (1) subparagraph (a) that is less than 1 tonne;
  - (b) Any facility in which a chemical specified in paragraph (1) subparagraph (a) is or was produced as an unavoidable by-product of activities for purposes not prohibited under the Convention, provided that the chemical does not exceed 3 per cent of the total product and that the facility is subject to declaration and inspection under the Verification Annex; or
  - (c) The single small-scale facility for production of Schedule 1 chemicals for purposes not prohibited under the Convention as referred to in Part VI of the Verification Annex.<sup>7</sup>

## 1.7 Definition of “Schedule 1, 2 and 3 chemicals”

“*Schedule 1, 2 and 3 chemicals*” means those chemicals listed respectively in Schedule 1, Schedule 2 and Schedule 3 of the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]] regardless of whether the chemical is pure or contained in a mixture.

## 1.8 Definition of “discrete organic chemical”

“*Discrete organic chemical*” means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates.<sup>8</sup>

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<sup>7</sup> As defined by Article II(8) of the Convention. Under Article III(1)(c), and Article I(4) of the Convention States Parties must declare and destroy any chemical weapons production facilities they own or possess, or that are located under their jurisdiction or control. These provisions are implemented in provisions 5.1 and 5.3 of this Implementation Kit. To prevent proliferation of chemical weapons, Article V(5) of the Convention also prohibits construction of any new chemical production facilities and modification of any existing facilities for the purpose of chemical weapons production. Such prohibition is criminalized in provision 6.6 of this Implementation Kit.

<sup>8</sup> As defined by paragraph 4 of Part I of the Verification Annex.

## 1.9 Definition of “international inspection”

“*International inspection*” means inspections or visits carried out by International Inspectors in accordance with the Convention.

## 1.10 Definition of “international inspectors”

“*International inspectors*” means all individuals designated by the Organisation according to the procedures as set forth in Part II, Section A of the Verification Annex to carry out activities to verify compliance with obligations under the Convention, including its declaration requirements or to assist carrying out such activities.<sup>9</sup>

## 1.11 Definition of “inspection site”

“*Inspection site*” means any facility or area at which an international inspection is carried out and which is specifically defined in the respective facility agreement or inspection request or mandate or inspection request as expanded by the alternative or final perimeter.

## 1.12 Definition of “Convention”

“*Convention*” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, adopted on 13 January 1993<sup>10</sup>, and includes any amendments to that Convention or the Annexes that are, or will become, binding on [State Party].

## 1.13 Definition of “Verification Annex”

“*Verification Annex*” means the Annex on Implementation and Verification to the Convention.

## 1.14 Definition of “Organisation”

“*Organisation*” means the Organisation for the Prohibition of Chemical Weapons established pursuant to Article VIII of the Convention.

## 1.15 Definition of “State Party”

“*State Party*” means a State which has consented to be bound by the Convention and for which the Convention is in force.<sup>11</sup>

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<sup>9</sup> The proposed definition comes from paragraphs 13 and 18 of Part I of the Verification Annex, and aims at covering both inspectors and inspection assistants designated to carry out international inspections.

<sup>10</sup> States Parties may wish to consider adding references to the ratification instrument of the Convention by the State Party and, if applicable, to the Official Gazette that published the Convention.

<sup>11</sup> The model language reflects the language used in the 1969 Vienna Convention on the Law of Treaties.



## **1.16 Specifications and other definitions in the Convention**

- (1) The definitions shall be interpreted in light of the Convention, including its Annexes, and the decisions adopted thereunder. Such specifications can be laid down by regulations.
- (2) Terms and expressions used and not defined in this [Act, Statute, Ordinance, etc.] but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

## **2. National Authority**

- (1) The [competent authority] shall by means of regulations designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation and other States Parties and for coordination of all national measures to be taken to fully and effectively implement the Convention.
- (2) In these regulations the [competent authority] shall direct or assign to the National Authority such powers and budget as may be necessary to coordinate the implementation and enforcement of the Convention, this law and its implementing regulations.
- (3) The [competent authority] may designate or establish further authorities to which it may assign specific duties with regard to the implementation of the Convention, this law and its implementing regulations.<sup>12</sup>

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<sup>12</sup> Such authorities may include a licensing authority and an advisory committee. Specific duties to be assigned may include the inspection of facilities or transferred goods.

### 3. Control regime for scheduled chemicals and discrete organic chemicals

#### 3.1 Control regimes for categories of chemicals<sup>13</sup>

##### 3.1.1 Control regime for Schedule 1 chemicals

- (1) The acquisition, retention, in-country-transfer, import, export and the use of Schedule 1 chemicals are prohibited unless the chemicals are exclusively applied to research, medical, pharmaceutical or protective purposes<sup>14</sup> and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes. These activities are subject to prior declaration in accordance with regulations established under this [Act, Statute, Ordinance, etc.].<sup>15</sup>

Activities except for production

Prohibition and declaration requirements

If the prior declaration shows that the activity reported would conflict with the obligations of [State Party] under the Convention,<sup>16</sup> the [competent authority] shall prohibit or limit the activity.<sup>17</sup>

- (2) The production of Schedule 1 chemicals is prohibited unless carried out for research, medical, pharmaceutical or protective purposes and in a facility licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.].<sup>18</sup>

Production

Prohibitions, licensing and exemptions

Exemptions from this licensing requirement may be granted in the regulations under this [Act, Statute, Ordinance, etc.] in strict accordance with the Convention.<sup>19</sup>

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<sup>13</sup> In addition to provisions 3.1.1 to 3.1.4 it is suggested considering the following provision:

#### **Trade in toxic chemicals and their precursors**

Traders of chemicals shall inform the National Authority when they have doubts of whether a purchaser of toxic chemicals or their precursors intends to use these chemicals for purposes not prohibited under the Convention. An indication of such intent is that it is improbable that the purchaser will use the full quantity of the purchased types of toxic chemicals and their precursors for purposes not prohibited under the Convention.

<sup>14</sup> It can be noted that these purposes are more restrictive than the purposes not prohibited as defined by provision 1.4 of this Implementation Kit, as far as Schedule 1 chemicals are concerned.

<sup>15</sup> The establishment of a prior declaration regime, as suggested in this provision, aims at allowing States Parties to ensure that the activities referred to in this provision will be conducted in compliance with the prohibitions and restrictions set out in Part VI of the Verification Annex, and allowing them to fulfil their obligation to make the prior notification of transfers of Schedule 1 chemicals as required by paragraph 5 of Part VI of the Verification Annex.

<sup>16</sup> One such case could be for example that the aggregate amount of Schedule 1 chemicals imported into the territory of the State Party or acquired by it in the year would exceed the 1 tonne limit set out in paragraph 2(c) and (d) of Part VI of the Verification Annex.

<sup>17</sup> States Parties may also wish to consider issuing clearance certificates, so as to ensure legal certainty for concerned natural and legal persons.

<sup>18</sup> In developing the licensing regime for Schedule 1 chemicals production facilities, States Parties shall take into consideration the specifications and restrictions found in paragraphs 8 to 12 of Part VI of the Verification Annex.

<sup>19</sup> States parties may consider granting such exemption to laboratories producing by synthesis Schedule 1 chemicals for research, medical or pharmaceutical purposes in aggregate quantities less than 100 g per year per facility in accordance with paragraph 12 of Part VI of the Verification Annex.

### 3. Control regime for scheduled chemicals and discrete organic chemicals

Further activities regarding Schedule 1 chemicals that shall only be carried out in licensed facilities may be identified in regulations established under this [Act, Statute, Ordinance, etc.] in strict accordance with the Convention.<sup>20</sup>

- |     |   |  |
|-----|---|--|
| (3) | The export and the import of Schedule 1 chemicals to or from a State not Party to the Convention, including transit through such State, are prohibited. <sup>21</sup>   | Exports/imports<br>(States not Party)<br><br>Prohibition |
| (4) | Any person having performed any activity that is covered by this section, or having operated a facility in which such activity was carried out, or anticipating carrying out such an activity in the future shall make declarations in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]. <sup>22</sup> | General<br>declaration<br>requirements                   |
| (5) | Any person carrying out any activity that is covered by this provision shall adopt measures to physically secure the chemicals from access of unauthorised persons, <sup>23</sup> to ensure the safety of people and to protect the environment. Such appropriate measures may be identified in regulations under this [Act, Statute, Ordinance, etc.].           | Safety and security<br>regulations                       |

#### 3.1.2 Control regime for Schedule 2 chemicals<sup>24</sup>

- |     |  |   |
|-----|--|---|
| (1) | Any person having performed an activity involving the production, processing or consumption of Schedule 2 chemicals, or having operated a facility in which such activity was carried out, or anticipating carrying out such an activity in the future shall make declarations in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]. <sup>25</sup> | Production,<br>processing and<br>consumption<br><br>Declaration<br>requirements |
| (2) | The export and the import of Schedule 2 chemicals to or from the territory of a State Party to the Convention shall be declared in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]. <sup>26</sup>  | Export/import<br><br>Declaration<br>requirements                                |

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<sup>20</sup> See operative paragraph (b) of C-I/DEC.43, dated 16 May 1997.

<sup>21</sup> As prescribed by paragraph 3 of Part VI of the Verification Annex.

<sup>22</sup> This provision aims at ensuring that States Parties will be in a position to comply with their reporting obligations with respect to Schedule 1 chemicals. See Article VI(2) and (8) of the Convention and paragraph 6 of Part VI(B) and Part VI(D) of the Verification Annex.

<sup>23</sup> While not explicitly mentioned in the Convention the requirement to physically protect Schedule 1 chemicals aims at implementing the obligation of Article VI(2) of the Convention to ensure that activities relating to toxic chemicals and their precursors be carried out for purposes not prohibited under the Convention.

<sup>24</sup> States Parties may consider establishing a licensing regime for Schedule 2 chemicals.

<sup>25</sup> See Article VI(2), (4) and (8) of the Convention and Part VII(A) of the Verification Annex.

<sup>26</sup> This provision aims at allowing States Parties to collect the information and data required to comply with its obligation to declare aggregate national data as prescribed by paragraph 1 of Part VII of the Verification Annex. States Parties may also wish to require reporting before the import respectively export, so as to be in a position to issue a clearance certificate, which would facilitate the procedures at customs.

### 3. Control regime for scheduled chemicals and discrete organic chemicals

- |     |  |   |
|-----|--|---|
| (3) | The export and the import of Schedule 2 chemicals to or from the territory of a State not party to the Convention, including transit through such State, are prohibited <sup>27</sup> unless an exemption that is provided for in regulations is applicable; <sup>28</sup> in case such an exemption is applicable, the export and the import shall be subject to declaration in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.]. | Exports/imports<br>(States not Party)<br><br>Prohibition,<br>exemption and<br>declaration |
|-----|--|---|

#### 3.1.3 Control regime for Schedule 3 chemicals

- |     |  |   |
|-----|--|---|
| (1) | Any person who has produced Schedule 3 chemicals, or who operates a facility in which such an activity was carried out, or who anticipates carrying out this activity in the future shall make declarations in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.]. <sup>29</sup>   | Production<br><br>Declaration<br>requirements                                   |
| (2) | The export and the import of Schedule 3 chemicals shall be declared in accordance with the regime established in regulations issued under this [Act Statute, Ordinance, etc.]. <sup>30</sup>   | Export/import<br><br>Declaration<br>requirements                                |
| (3) | Without prejudice of the requirement set out in paragraph (2) above, and except when exempted by regulations, <sup>31</sup> the export of Schedule 3 chemicals to the territory of a State not Party is prohibited unless licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.]. The license may only be granted after it has been ensured that the transferred chemicals shall only be used for purposes not prohibited under the Convention. No license shall be granted without first having received an end-use certificate from the competent authorities of the recipient State. | Export to States<br>not Party<br><br>Prohibition,<br>licensing and<br>exemption |

#### 3.1.4 Control regime for unscheduled discrete organic chemicals

Any person operating a facility producing unscheduled discrete organic chemicals shall make declarations in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]. <sup>32</sup>	Production  Declaration requirements
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<sup>27</sup> As provided for in paragraph 31 of Part VII of the Verification Annex.

<sup>28</sup> States Parties may consider exempting from this prohibition the export and import to States not party of products containing low concentration of Schedule 2 chemicals to the extent allowed by C-V/DEC.16, dated 17 May 2000.

<sup>29</sup> See Article VI(2), (5) and (8) of the Convention and Part VIII(A) of the Verification Annex.

<sup>30</sup> This provision aims at allowing States Parties to collect the information and data required to comply with their obligation to declare aggregate national data as prescribed by paragraph 1 of Part VIII of the Verification Annex. States Parties may also wish to require reporting before the import respectively export, so as to be in a position to issue a clearance certificate, which would facilitate the procedures at customs.

<sup>31</sup> States Parties may consider exempting from restrictions applying to transfers of Schedule 3 chemicals to States not party those products containing low concentration of Schedule 3 chemicals to the extent allowed by C-VI/DEC.10, dated 17 May 2001.

<sup>32</sup> See Article VI(2), (6) and (8) of the Convention and Part IX(A) of the Verification Annex.

In C-I/DEC.39 dated 16 May 1997 the Conference of the States Parties has adopted the understanding that discrete organic chemicals are not covered by the definition, when:

- a) they are an oligomer or polymer, whether or not they contain phosphorus, sulphur or fluorine; or
- b) they contain only carbon and metal.

### 3.1.5 Record-keeping

Any person carrying out an activity referred to in provisions 3.1.1 to 3.1.4 above, or operating a facility where such activity is carried out, shall keep records in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

### 3.1.6 Loss, theft or discovery of scheduled chemicals

- (1) Any person carrying out an activity referred to in provisions 3.1.1 to 3.1.3 above, or operating a facility where such activity is carried out, shall report without delay any loss or theft of scheduled chemicals to the National Authority.
- (2) Any person discovering scheduled chemicals on the territory of [State Party] shall inform without delay the [competent authority]<sup>33</sup> which shall inform the National Authority].

## 3.2 Other relevant activities and facts

- (1) The [competent authority] may in regulations identify further declarable past or anticipated activities and facts relevant to the Convention.
- (2) In the event that the [competent authority] has reason to believe that any natural or legal person has information that is relevant for a declaration required to be made by [State Party] to the Organisation, or that is relevant for the implementation of the Convention or for the enforcement of this [Act, Statute, Ordinance, etc.], it may by notice require the person to provide such information.

## 3.3 Basis for implementing regulations<sup>34</sup>

### 3.3.1 Legal basis for establishing a licensing regime

- (1) The [competent authority] shall make regulations establishing a licensing regime for all licenses to be granted under this chapter.
- (2) The regulations on licenses shall, *inter alia*,
  - (a) provide for different types of licenses with different requirements;
  - (b) prescribe procedures for applying for licenses;
  - (c) establish procedures for processing the applications for licenses;
  - (d) establish procedures for the granting or refusal of licenses;
  - (e) prescribe terms and conditions for the grant of licenses;

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Instead of changing the national definition of discrete organic chemicals, States Parties may – in the regulations – simply not require the making of declarations from natural and legal persons, when the unscheduled discrete organic chemicals fulfil the conditions of paragraphs a) and b) above.

<sup>33</sup> E.g. the police.

<sup>34</sup> This chapter provides a list of issues that may need to be dealt with by such Regulations. In addition, since some legal systems may require that legislation implementing the Convention provides a legal basis for further implementing Regulations, this chapter also gives an example of how such a legal basis can be formulated.

### 3. Control regime for scheduled chemicals and discrete organic chemicals

- (f) provide for a regime according to which granted licenses may be suspended, revoked, extended, renewed, transferred, or replaced;
  - (g) establish fees payable by applicants for or holders of licences; and
  - (h) prescribe a record-keeping regime for licence applicants or holders.
- (3) In case the licensed activity is not or only partially carried out, the [competent authority] shall be informed without delay.

#### **3.3.2 Legal basis for establishing a declaration regime**

- (1) The [competent authority] shall make regulations establishing a declaration regime for all declarations to be made under this chapter.
- (2) The Regulations on declarations shall, inter alia,
- (a) specify which past, present or anticipated activities and which relevant facts shall be declared;
  - (b) prescribe procedures for making such declarations;
  - (c) specify which documents shall be provided along with the declaration.
- (3) The regulations may identify cases in which declarations are not required.
- (4) The regulations shall prescribe a record-keeping regime for persons required to make declarations under this [Act, Statute, Ordinance, etc.].

#### **3.3.3 Common rules for the licensing and the declaration regime**

The regulations establishing a licensing and a declaration regime shall ensure that the [competent authority] is enabled to

- (a) prevent prohibited activities and comply with the requirements of the Convention;
- (b) gather all information as required under Article VI of the Convention; and
- (c) make all declarations to the Organisation under Article VI of the Convention in a comprehensive and timely manner.

## **4. International inspections**<sup>35</sup>

### **4.1 General rule**

- (1) International inspections can be carried out in any place under the jurisdiction of [State Party] when required by the Convention.
- (2) International inspections shall only be carried out in facilities that produced, processed or consumed scheduled chemicals or discrete organic chemicals in the past and facilities in which the production, processing or consumption of scheduled chemicals is anticipated unless the international inspection qualifies as a challenge inspection<sup>36</sup> or an investigation in a case of alleged use of chemical weapons,<sup>37</sup> or as part of the verification activities related to chemical weapons production facilities and their destruction<sup>38</sup> under the Convention.
- (3) In performing their duties international inspectors have the powers, privileges and immunities as laid down in the Convention.

### **4.2 Escort team**

- (1) At each international inspection, the [competent authority] shall appoint an escort team, each member of which shall be authorised to act as an escort.
- (2) Escorts shall meet the inspectors at the point of entry to the territory, be present during their operations and accompany them back to the point of exit from the territory.
- (3) Escorts shall ensure that the international inspectors abide by the rules established in the Convention. They shall ensure that the inspected persons comply with their duties under this [Act, Statute, Ordinance, etc.] and the regulations to be established thereunder.
- (4) The responsibility of the head of the escort team includes representing [State Party] vis-à-vis the head of the inspection team and the persons subject to international verification.
- (5) Further rights and duties of the escort team and the head of the escort team shall be established in regulations to be established under this [Act, Statute, Ordinance, etc.].

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<sup>35</sup> Most States Parties also establish a regime for national inspections. The rights and obligations of inspected persons and national inspectors in case of national inspections can be similar to the rights and obligations of inspected persons and international inspectors in international inspections.

However there are two major differences:

(1) While in international inspections there are three parties involved (i.e. the inspected person, the State Party and the Organisation) in national inspections only two parties are involved (the inspected person and the State Party). This will result in the absence of an escort team.

(2) National inspections can be more flexible in their planning than international inspections, which allows for an even more flexible approach with regard to the interests of the inspected person (in particular with regard to the timing of the inspection: appeals may have suspensive effect).

<sup>36</sup> As provided for in Article IX of the Convention and Part X of the Verification Annex.

<sup>37</sup> As provided for in Articles IX and X of the Convention and Part XI of the Verification Annex.

<sup>38</sup> As provided for in Article V of the Convention and Part V(C) of the Verification Annex.



### 4.3 Inspected persons and personnel

- (1) Inspected persons and their personnel shall
  - (a) facilitate the international inspection; and
  - (b) cooperate with the international inspectors and the escort team during the preparation and performance of, and follow-up to the inspection.
- (2) *Inter alia*, they shall –
  - (a) grant access to the inspection site to the international inspectors and the escort team and – in case of a challenge inspection – to any observer;
  - (b) grant access to relevant records to the international inspectors and the escort team;
  - (c) provide all relevant information and data requested by the international inspectors;
  - (d) take and analyse samples [and/or] tolerate the taking and analysis of samples and the taking of photos in accordance with the Convention, this law and its implementing regulations;
  - (e) tolerate the installation and use of continuous monitoring instruments and systems and seals, and notify the National Authority immediately if an event occurs or may occur which may have an impact on the monitoring system.
- (3) Further rights and duties of inspected persons and their personnel may be specified in regulations to be established under this [Act, Statute, Ordinance, etc.].

### 4.4 Procedures

- (1) The [competent authority] shall notify the international inspection to the inspected person as soon as possible.
- (2) The inspected person shall be assumed to have granted its consent, unless it informs the National Authority of the opposite within a timeline indicated in the notification in accordance with paragraph 1.
- (3) In the event that the inspected person does not consent to the inspection, the National Authority shall apply for a search warrant on behalf of the international inspectors and the members of the escort team. The warrant shall be granted if the conditions for carrying out an international inspection under the Convention are fulfilled.
- (4) An appeal by the inspected person against a search warrant shall not have suspensive effect on the carrying out of the international inspection.

## **5. Further implementing provisions: forfeiture, confidentiality and legal assistance**<sup>39</sup>

### **5.1 Declaration of chemical weapons production facilities**

Any person holding any information that is related to a chemical weapons production facility in [State Party] or that is suspected to be related to such a facility shall inform without delay the [competent authority]<sup>40</sup> which shall inform the National Authority].

### **5.2 Forfeiture of chemical weapons**<sup>41</sup>

- (1) If any chemical weapon, or old or abandoned chemical weapon is found in any place under the jurisdiction of [State Party], the weapon—
  - (a) is forfeited to the State; and
  - (b) may be seized without warrant by any [competent officer] of the State; and
  - (c) shall be stored pending disposal, and disposed of in a manner determined by [the competent authority] in accordance with the Convention.<sup>42</sup>
- (2) Any chemical weapon discovered on the territory of [State Party] shall be reported to the Organisation by [competent authority] in accordance with the Convention.
- (3) Any chemical that is being used in the development or production of a chemical weapon may be seized by the State.

### **5.3 Seizure of a chemical weapons production facility**

- (1) If the [competent authority] has reasonable cause to believe that any equipment or building is a chemical weapons production facility, or is being constructed or modified to be used as a chemical weapons production facility, the [competent authority] shall:
  - (a) seize such equipment or building;
  - (b) as the case may be, order immediate suspension of all activities at the facility, except safety and physical security activities at the facility.<sup>43</sup>
- (2) Upon determination that the equipment or building is a chemical weapons production facility, or is being constructed or modified to be used as a chemical weapons production facility—

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<sup>39</sup> States Parties are required under Article VIII(50) of the Convention, to enter into a Privileges and Immunities Agreement with the Organisation that clearly delineates the scope of the privileges and immunities of the Organisation and its officials and experts. No legislation is required in this regard.

<sup>40</sup> E.g. the police.

<sup>41</sup> This Section closely relates to the Penal Provisions chapter. Accordingly some States Parties have included this provision in their penal implementing provisions.

<sup>42</sup> The relevant provisions are found in Article I(2) in conjunction with Article IV of the Convention and with Part IV(A) of the Verification Annex.

<sup>43</sup> See paragraph 14 of Part V of the Verification Annex.

## 5. Further implementing provisions: forfeiture, confidentiality and legal assistance

- (a) the facility shall be closed;
  - (b) cessation of all activities at the facility shall be ordered, except activities required for closure and safety and physical security activities at the facility;
  - (c) the facility shall be destroyed or converted in accordance with the Convention,<sup>44</sup> and at the expense of [...].
- (3) The [competent authority] shall declare the facility and report any other information as may be required to the Organisation in accordance with the Convention.<sup>45</sup>

### 5.4 Protection of confidential information<sup>46</sup>

- (1) All information and documents given to or obtained by [the National Authority] pursuant to the Convention, this law or its implementing regulations shall be evaluated in order to establish whether they contain confidential information. Information shall be considered confidential if it is so designated by the natural or legal person to whom it relates or from whom it has been received. It shall also be considered confidential if its disclosure could reasonably be expected to cause damage to the person it relates to or from whom it has been received or to the mechanisms for implementation of the Convention.
- (2) All information and documents given to or obtained by any other person pursuant to the Convention, this law or its implementing regulations shall be treated as confidential information, unless such information or document is publicly available.
- (3) Disclosure of confidential information or documents is only allowed with the consent of the person to whose affairs it relates or for the purpose of—
  - (a) implementing the Convention;
  - (b) enforcing of this [Act, Statute, Ordinance, etc.]; or
  - (c) dealing with an emergency involving public safety.<sup>47</sup>

### 5.5 Enabling legal assistance to other States Parties

- (1) Without prejudice to the confidentiality regime, the [competent authorities] for crime prevention, criminal proceedings, and implementation of the Convention may collaborate with competent authorities of other States and international organisations and entities, and coordinate their actions to the extent required by the implementation of this [Act, Statute, Ordinance, etc.] or of the equivalent foreign statute(s).

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<sup>44</sup> The relevant provisions are found in Article V and Part V(B) and (D) of the Verification Annex.

<sup>45</sup> The relevant provisions are found in Article III(1)(c) and Part V(A) of the Verification Annex.

<sup>46</sup> See Article VII(6) of the Convention and C-1/DEC.13/Rev.1 dated 2 February 2006, in particular section 2.1 of Chapter IV of its Annex.

<sup>47</sup> States Parties may consider that breach of confidentiality may cause financial damage and ensure that its tort law provides for a legal basis for claiming compensation.

5. Further implementing provisions: forfeiture, confidentiality and legal assistance

- (2) The [competent authorities] may request other State authorities and international organisations or entities, under paragraph (1), to provide relevant data or information. The [competent authorities] are authorized to receive data or information concerning—
  - (a) the nature, quantity, and utilisation of scheduled chemicals and related technologies, and the places of consignment and consignees for such scheduled chemicals, and related technologies, or
  - (b) persons taking part in the production, delivery, or trade of the scheduled chemicals, or related technologies in subparagraph (a).
- (3) If a State has entered into a reciprocity agreement with [State Party], the [competent authorities] may provide, on their own initiative or on request, the data or information described in paragraph (2) to that State so long as the competent authority of the other State provides assurances that such data or information shall—
  - (a) only be utilized for purposes consistent with this [Act, Statute, Ordinance, etc.] and
  - (b) only be used in criminal proceedings on the condition that they are obtained in accordance with those provisions governing international judicial cooperation.
- (4) The [competent authorities of State Party] may provide the data or information described in paragraph (2) to international organisations or entities if the conditions set forth in paragraph (3) are fulfilled, in which case the requirement for a reciprocity agreement is waived.

## **6. Penal provisions**

### **6.1 Acquisition or possession of chemical weapons**

Any person<sup>48</sup> [level of intent]<sup>49</sup> developing, producing, manufacturing, otherwise acquiring, possessing, stockpiling or retaining a chemical weapon, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

### **6.2 Transportation or transfer of chemical weapons**

Any person [level of intent] transporting, transiting, trans-shipping or transferring directly or indirectly a chemical weapon to any other person, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

### **6.3 Use of chemical weapons**

Any person [level of intent] using a chemical weapon, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

### **6.4 Engagement in military preparations to use of chemical weapons**

Any person [level of intent] engaging in any military preparations to use a chemical weapon, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

### **6.5 Use of riot control agents as a method of warfare**

Any person [level of intent] using riot control agents as a method of warfare commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

### **6.6 Construction of new chemical weapons production facilities**

Any person [level of intent] owning or possessing a chemical weapons production facility, constructing any new chemical weapons production facility or modifying any existing facility for the purpose of transforming it into a chemical weapons production facility commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

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<sup>48</sup> States Parties should ensure that the term “person” includes natural and legal persons.

<sup>49</sup> E.g. “intentionally, knowingly, recklessly, or with gross negligence”.

## **6.7 Producing, acquiring, retaining, using or in-country transferring Schedule 1 chemicals**

Any person [level of intent]

- (a) producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical in the territory of a State not Party to the Convention, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].
- (b) illegally producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

## **6.8 Re-exportation of Schedule 1 chemicals**

Any person [level of intent] exporting a Schedule 1 chemical previously imported into [State Party] to a third state, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

## **6.9 Export or import of Schedule 1 and 2 chemicals**

Any person [level of intent] illegally exporting to, or importing from, a State not party to the Convention, a Schedule 1 or 2 chemical commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

## **6.10 Export of Schedule 3 chemicals**

Any person [level of intent] illegally exporting a Schedule 3 chemical to a State not party to the Convention commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

## **6.11 Obstruction of verification and enforcement measures<sup>50</sup>**

- (1) Any person [level of intent] obstructing measures of verification or enforcement under the Convention [and/or] this law and its implementing regulations, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].
- (2) Paragraph 1 does not apply to a person that has not granted its consent to the carrying out of the international inspection, unless a search warrant has been issued.

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<sup>50</sup> This provision covers various kinds of behaviours and accordingly States Parties may wish to provide for a wide range of penal sanctions.

## **6.12 Failure to comply with the licensing or declaration regime<sup>51</sup>**

Any person [level of intent] failing to comply with the licensing or the declaration regime including the record-keeping regime or any other requirement to provide information established by this law and its implementing regulations, commits an offence and shall be punished upon conviction by [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount].

## **6.13 Failure to protect confidential information**

Any person who [level of intent] fails to comply with the provision of this law and its implementing regulations to protect confidential information commits an offence and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

## **6.14 Accessory offence, conspiracy and attempt**

Any person—

- (a) [level of intent] assisting, encouraging or inducing anyone to commit an offence under this [Act, Statute, Ordinance, etc.];
  - (b) conspiring to commit an offence under this [Act, Statute, Ordinance, etc.];  
or
  - (c) attempting to commit an offence under this [Act, Statute, Ordinance, etc.]
- shall be deemed to have committed the like offence.

## **6.15 Extraterritorial application**

Any natural person who, in a place outside the jurisdiction of [State Party], commits an act or omission that would, if committed in a place under the jurisdiction of [State Party], constitute an offence under this [Act, Statute, Ordinance, etc.] is deemed to have committed it in a place under the jurisdiction of [State Party] if –

- (a) the person is a [State Party's] national; or
- (b) the place was under the control of [State Party].

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<sup>51</sup> *Ibidem*. While not explicitly mentioned, this provision for example covers the submission of false or misleading information in licensing and declaration.

## **7. Final provisions**

### **7.1 Primacy of the Convention**

Where there is any inconsistency between any other law and this [Act, Statute, Ordinance, etc.] or the Convention, this [Act, Statute, Ordinance, etc.] and the Convention shall prevail.

### **7.2 Additional regulations**

Further regulations shall be adopted as required for effective implementation of this [Act, Statute, Ordinance, etc.] and the Convention.

### **[7.3 Amendment of the Annex on Chemicals to this [Act, Statute, Ordinance, etc.]**

In case the Annex on Chemicals to the Convention is amended the Annex on Chemicals to this [Act, Statute, Ordinance, etc.] shall be adjusted and for this purpose be amendable by regulations.]

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