



Cultural Property (Armed Conflicts) Act 2017

2017 CHAPTER 6

PART 2

SERIOUS VIOLATION OF SECOND PROTOCOL

3 Offence of serious violation of Second Protocol

- (1) A person commits an offence if—
 - (a) the person does an intentional act of a kind described in any of sub-paragraphs (a) to (e) of paragraph 1 of Article 15 of the Second Protocol,
 - (b) the act is a violation of the Convention or the Second Protocol, and
 - (c) the person knows that the property to which the act relates is cultural property.
- (2) It does not matter whether the act is done in the United Kingdom or elsewhere.
- (3) If the act is of a kind described in paragraph 1(a), (b) or (c) of Article 15 of the Second Protocol it does not matter whether the person is a UK national.
- (4) If the act is of a kind described in paragraph 1(d) or (e) of that Article and is done outside the United Kingdom an offence is committed only if the person is—
 - (a) a UK national, or
 - (b) a person subject to UK service jurisdiction.
- (5) In this Part “UK national” means—
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas Citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject,
 - (c) a British protected person within the meaning of that Act, or
 - (d) a body incorporated under the law of any part of the United Kingdom.
- (6) In this Part “person subject to UK service jurisdiction” means—

Status: This is the original version (as it was originally enacted).

- (a) a person subject to service law within the meaning of the Armed Forces Act 2006, or
- (b) a civilian subject to service discipline within the meaning of that Act.

4 Ancillary offences

- (1) An offence ancillary to an offence under section 3 is capable of being committed in the United Kingdom or elsewhere.
- (2) An offence ancillary to an offence under section 3 in respect of an act of a kind described in paragraph 1(a), (b) or (c) of Article 15 of the Second Protocol is capable of being committed by any person, whether a UK national or not.
- (3) An offence ancillary to an offence under section 3 in respect of an act done outside the United Kingdom of a kind described in paragraph 1(d) or (e) of Article 15 of the Second Protocol is capable of being committed by a person outside the United Kingdom only if the person is—
 - (a) a UK national, or
 - (b) a person subject to UK service jurisdiction.
- (4) In the application of this Part to England and Wales, references to an offence that is ancillary to an offence under section 3 are to—
 - (a) attempting or conspiring to commit that offence, or
 - (b) an offence under section 4(1) or 5(1) of the Criminal Law Act 1967 (assisting an offender or concealing the commission of an offence) where the relevant offence mentioned there is an offence under section 3 of this Act.
- (5) In the application of this Part to Northern Ireland, references to an offence that is ancillary to an offence under section 3 are to—
 - (a) attempting or conspiring to commit that offence, or
 - (b) an offence under section 4(1) or 5(1) of the [Criminal Law Act \(Northern Ireland\) 1967 \(c. 18 \(N.I.\)\)](#) (assisting an offender or concealing the commission of an offence) where the relevant offence mentioned there is an offence under section 3 of this Act.
- (6) In the application of this Part to Scotland, references to an offence that is ancillary to an offence under section 3 are to—
 - (a) being art and part in the commission of that offence,
 - (b) aiding, abetting, counselling, procuring or inciting a person to commit that offence,
 - (c) attempting or conspiring to commit that offence,
 - (d) perverting, or attempting to pervert, the course of justice in connection with that offence, or
 - (e) defeating, or attempting to defeat, the ends of justice in connection with that offence.
- (7) A reference in this Part to an offence that is ancillary to an offence under section 3 includes a reference to an offence that is ancillary to such an ancillary offence, and so on.
- (8) Subsections (4) to (6) apply for the purposes of subsection (7) as if any reference to an offence under section 3 included a reference to an offence that is ancillary to an offence under section 3, and so on.

5 Responsibility of commanders and other superiors

- (1) A person described in this section as responsible for a section 3 offence is to be treated as—
 - (a) aiding, abetting, counselling or procuring the commission of the offence under the laws of England and Wales and Northern Ireland, and
 - (b) being art and part in the commission of the offence under the law of Scotland.
- (2) A military commander is responsible for a section 3 offence committed by forces under the commander's effective command and control if—
 - (a) the offence is committed as a result of the commander's failure to exercise control properly over those forces,
 - (b) the commander either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit the offence, and
 - (c) the commander failed to take all necessary and reasonable measures within the commander's power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- (3) In subsection (2)—
 - (a) references to a military commander include a reference to a person effectively acting as a military commander, and
 - (b) in relation to such a person, the reference to effective command and control is to effective authority and control.
- (4) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for a section 3 offence committed by a subordinate who is under the superior's effective authority and control if—
 - (a) the offence is committed as a result of the superior's failure to exercise control properly over the subordinate,
 - (b) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit the offence,
 - (c) the offence concerned activities that were within the superior's effective responsibility and control, and
 - (d) the superior failed to take all necessary and reasonable measures within the superior's power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- (5) References in this section to a "section 3 offence" are to—
 - (a) an offence under section 3, or
 - (b) an offence ancillary to such an offence.
- (6) In interpreting and applying the provisions of this section (which corresponds to article 28 of the Statute of the International Criminal Court done at Rome on 17 July 1998) a court must take account of any relevant judgment or decision of the International Criminal Court.
- (7) Nothing in this section affects any criminal liability that arises apart from this section.

6 Penalties

A person guilty of an offence under section 3, or an offence ancillary to such an offence, is liable on conviction on indictment to imprisonment for a term not exceeding 30 years.

7 Consent to prosecutions

Proceedings for an offence under section 3, or an offence ancillary to such an offence, may be brought—

- (a) in England and Wales, only by or with the consent of the Attorney General;
- (b) in Northern Ireland, only by or with the consent of the Director of Public Prosecutions for Northern Ireland.