Nuclear Explosions (Prohibition and Inspections) Act 1998

1998 CHAPTER 7

An Act to enable effect to be given to certain provisions of the Comprehensive Nuclear-Test-Ban Treaty adopted in New York on 10th September 1996 and the Protocol to that Treaty; and for connected purposes. [18th March 1998]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PROSPECTIVE

Nuclear explosions

1 Causing a nuclear explosion.

(1) Any person who knowingly causes a nuclear weapon test explosion or any other nuclear explosion is guilty of an offence and liable on conviction on indictment to imprisonment for life.

(2) Nothing in subsection (1) shall apply to a nuclear weapon explosion carried out in the course of an armed conflict.

(3) If in proceedings for an offence under this section any question arises as to whether a nuclear weapon explosion was or was not carried out in the course of an armed conflict, that question shall be determined by the Secretary of State; and a certificate purporting to set out any such determination and to be signed by the Secretary of State shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

Status: *Point in time view as at 01/04/2003. This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Nuclear Explosions (Prohibition and Inspections) Act 1998. (See end of Document for details)*

2 Application of section 1.

(1) Section 1 shall apply to acts done in the United Kingdom or elsewhere.

(2) So far as it applies to acts done outside the United Kingdom, section 1 applies to—
- (a) United Kingdom nationals,
- (b) Scottish partnerships, and
- (c) bodies incorporated under the law of any part of the United Kingdom.

(3) For the purposes of subsection (2), 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 [M1]British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act.

(4) 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.

(5) 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.

Marginal Citations

M1 1981 c. 61.

3 Provision supplementary to section 1.

(1) Proceedings for an offence under section 1 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.

(2) The court by or before which a person is convicted of an offence under section 1 may order that anything shown to the court's satisfaction to relate to the offence shall be forfeited, and either destroyed or otherwise dealt with in such manner as the court may order.

(3) In particular, the court may order the thing to be dealt with as the Secretary of State may see fit; and in such a case the Secretary of State may direct that it be destroyed or otherwise dealt with.

(4) Where—
- (a) the court proposes to order anything to be forfeited under this section, and
- (b) a person claiming to have an interest in it applies to be heard by the court,

the court must not order it to be forfeited unless he has been given an opportunity to show cause why the order should not be made.

Inspections under the Treaty

4 Interpretation of inspection provisions.

For the purposes of this section and sections 5 to 9—

"inspection team", in relation to an on-site inspection, means the team of inspectors and inspection assistants selected, in accordance with the Treaty's inspection provisions, for the purposes of the inspection;

"observer", in relation to an on-site inspection, means a representative of a party to the Treaty who, in accordance with the Treaty's inspection provisions, is sent by that party to observe the conduct of the inspection;

"on-site inspection" means an on-site inspection carried out in accordance with the Treaty's inspection provisions;

"the Treaty" means the Comprehensive Nuclear-Test-Ban Treaty adopted in New York on 10th September 1996;

"the Treaty's inspection provisions" means the provisions of Article IV of, and Part II of the Protocol to, the Treaty;

"UK representative", in relation to an on-site inspection, means a representative of the United Kingdom who, in accordance with the Treaty's inspection provisions, liaises with and accompanies the inspection team during the performance of its duties.

5 Rights of entry etc. for purposes of on-site inspections.

(1) If it is proposed to conduct an on-site inspection in the United Kingdom, the Secretary of State may issue an authorisation under this section in respect of that inspection.

(2) An authorisation under this section shall—

(a) contain a description of the area (the specified area) in which the inspection is to be conducted,

(b) state the names of the members of the inspection team,

(c) state the name of any observer, and

(d) state the name of the UK representative or representatives.

(3) An authorisation under this section shall have the effect of authorising the inspection team—

(a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by the Treaty's inspection provisions, and

(b) to do such other things within that area in connection with the inspection as they are entitled to do by virtue of those provisions.

(4) An authorisation under this section shall, in addition, have the effect—

(a) of authorising the UK representative or representatives to accompany the inspection team in accordance with the Treaty's inspection provisions,

(b) of authorising any constable to give such assistance as a UK representative requests for the purpose of facilitating the conduct of the inspection in accordance with those provisions, and

(c) of authorising any observer to exercise within the specified area such rights of access and entry as are conferred on him by the Treaty's inspection provisions.

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(5) Any constable giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision.

6 Provisions supplementary to section 5.

(1) The occupier of any premises—
- (a) in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under section 5, or
- (b) on which an on-site inspection is being carried out in reliance on such an authorisation,

or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by any UK representative.

(2) The validity of any authorisation purporting to be issued under section 5 in respect of an on-site inspection shall not be called in question in any court of law at any time before the conclusion of that inspection.

(3) Accordingly, where an authorisation purports to be issued under that section in respect of an on-site inspection, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the inspection.

(4) If in any proceedings any question arises whether a person at any time was or was not a member of the inspection team, an observer or a UK representative a certificate signed by or on behalf of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact; and a certificate purporting to be so signed shall be deemed to be so signed without further proof, unless the contrary is shown.

(5) If an authorisation is issued under section 5, the Secretary of State may issue an amendment varying the specified area, and—
- (a) from the time when an amendment is expressed to take effect, that section shall apply as if the specified area were the area as varied;
- (b) subsection (2) above shall apply to the amendment as it applies to the authorisation;
- (c) the Secretary of State may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply.

7 Offences in connection with on-site inspections.

(1) If an authorisation has been issued under section 5 in respect of an on-site inspection, a person is guilty of an offence if—
- (a) he refuses without reasonable excuse to comply with any request made by a constable or a UK representative for the purpose of facilitating the conduct of that inspection in accordance with the Treaty's inspection provisions, or
- (b) he wilfully obstructs a member of the inspection team, an observer or a UK representative in the performance of his functions under the Treaty's inspection provisions.

(2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

8 Privileges and immunities in connection with on-site inspections.

(1) Members of inspection teams and observers shall enjoy the same privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the 1961 Articles, namely—

(a) Article 29,

(b) paragraphs 1 and 2 of Article 30,

(c) paragraphs 1, 2 and 3 of Article 31, and

(d) Article 34.

(2) Such persons shall, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 1(b) of Article 36 of the 1961 Articles, except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine.

(3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time when they are in the United Kingdom—

(a) in connection with the carrying out there of an on-site inspection, or

(b) while in transit to or from the territory of another party to the Treaty in connection with the carrying out of such an inspection there.

(5) If—

(a) immunity from jurisdiction of a member of an inspection team is waived in accordance with paragraph 30 of Part II of the Protocol to the Treaty, and

(b) a notice made by the Secretary of State and informing the member of the waiver is delivered to him in person,

then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.

(6) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate signed by or on behalf of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact; and a certificate purporting to be so signed shall be deemed to be so signed without further proof, unless the contrary is shown.

(7) In this section—

"the 1961 Articles" means the Articles which are set out in Schedule 1 to the [M2]Diplomatic Privileges Act 1964 (Articles of the Vienna Convention on Diplomatic Relations of 1961 having force of law in United Kingdom);

"approved equipment" and "samples" shall be construed in accordance with the Treaty's inspection provisions;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the [M3]Interpretation Act 1978).

(8) The Secretary of State may, by order, apply this section with such modifications as he considers appropriate to the Director General and members of the staff of the Technical Secretariat established in accordance with the Treaty.

(9) An order under subsection (8) shall be made by statutory instrument, but no order shall be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

Marginal Citations

M2 1964 c. 81.

M3 1978 c. 30.

9 Reimbursement of expenditure.

The Secretary of State may reimburse any person in respect of expenditure incurred in connection with an on-site inspection.

Offences: miscellaneous

10 Power to search and obtain evidence.

(1) If—

(a) a justice of the peace is satisfied on information on oath, or in Northern Ireland on complaint on oath, that there is reasonable ground for suspecting that an offence under this Act is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or

(b) in Scotland a justice, within the meaning of section 307 of the [M4]Criminal Procedure (Scotland) Act 1995, is satisfied by evidence on oath as mentioned in paragraph (a) above,

he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State 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) A person who enters the premises under the authority of the warrant may—

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

(b) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;

(c) take copies of, or seize and remove, any such document;

(d) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence;

(e) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence.

(3) A constable who enters the premises—

(a) under the authority of the warrant, or

(b) by virtue of subsection (2)(a),

may search any person found on the premises whom he has reasonable cause to believe to be in possession of any document, device or substance which may be required as evidence for the purposes of proceedings in respect of an offence under this Act.

(4) No constable shall, by virtue of subsection (3), search a person of the opposite sex.

(5) A person (other than a constable) who exercises powers conferred by a warrant under this section shall, if the warrant so provides, do so only in the presence of a constable.

Modifications etc. (not altering text)

C1 Powers of seizure in s. 10(2)(c)(d)(e) extended (*prosp.*) by 2001 c. 16, ss. 50, 51, 55, 138(2)-(4), **Sch. 1 Pt. I para. 64**

C2 S. 10(2)(c)(d)(e) powers of seizure extended (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 50, 138(2), **Sch. 1 para. 64** (with ss. 52-54, 68); S.I. 2003/708, art. 2(a)

Marginal Citations

M4 1995 c. 46.

11 Offences by bodies corporate and Scottish partnerships.

(1) Where an offence under this Act is committed by a body corporate and 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.

(2) In subsection (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under this Act is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Other miscellaneous provisions

12 Amendment of Army, Air Force and Naval Discipline Acts.

In each of the following provisions, namely—

(a) section 70(4) of the [M5]Army Act 1955 (civil offences),

(b) section 70(4) of the [M6]Air Force Act 1955 (civil offences), and

(c) section 48(2) of the [M7]Naval Discipline Act 1957 (exclusion of jurisdiction of courts-martial),

after the words "Chemical Weapons Act 1996" there shall be inserted " or an offence under section 1 of the Nuclear Explosions (Prohibition and Inspections) Act 1998 ".

Marginal Citations

M5 1955 c. 18.

M6 1955 c. 19.

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M7 1957 c. 53.

13 Power to amend this Act.

(1) The Secretary of State may by order make such additions to, omissions from or other modifications to this Act as he considers necessary or desirable to give effect to any amendment of the Treaty made in pursuance of its provisions.

(2) The power to make an order under this section shall be exercisable by statutory instrument.

(3) Where an order under this section modifies this Act solely to give effect to an amendment or amendments made in accordance with Article VII(8) of the Treaty, the instrument containing the order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In any other case, the order shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(5) In this section "the Treaty" has the meaning given in section 4.

14 The Crown.

(1) Subject to the following provisions of this section, this Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act shall make the Crown criminally liable; but the High Court or in Scotland the Court of Session may, on the application of a person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), the provisions made by or under this Act apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this section affects Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the [M8]Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity) were contained in this Act.

Marginal Citations
M8 1947 c. 44.

15 Commencement, extent and citation.

(1) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(2) This Act extends to Northern Ireland.

(3) Her Majesty may by Order in Council make provision for extending any of the provisions of this Act, with such exceptions, adaptations or modifications as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.

(4) This Act may be cited as the Nuclear Explosions (Prohibition and Inspections) Act 1998.

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