



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 19.19

# CHEMICAL WEAPONS (PROHIBITION AND CONTROL) ACT

#### Revised Edition

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

#### CHEMICAL WEAPONS (PROHIBITION AND CONTROL) ACT

Act 20 of 2006 ... in force 28th December 2006

Page  
3



## **CHAPTER 19.19**

# **CHEMICAL WEAPONS (PROHIBITION AND CONTROL) ACT**

### ARRANGEMENT OF SECTIONS

#### PART I

##### PRELIMINARY MATTERS

1. Short title and commencement
2. Interpretation
3. Application of Act to aircrafts, ships, vessels and extraterritoriality
4. Discretion must accord with obligations

#### PART II

##### OFFENCES

5. Development, production, stockpiling, etc. of chemical weapons
6. Forfeiture of chemical weapons
7. Use of riot control agents as method of warfare
8. Intentional or reckless use of Schedule 1 chemical
9. Prohibition of importation of Schedules 1, 2 and 3 chemicals
10. Application of Customs (Control and Management) Act

#### PART III

##### INFORMATION AND DOCUMENTS

11. Notification, keeping of records etc. relating to chemicals
12. Request by Minister for provision of information
13. Making of false or misleading statements

#### PART IV

##### INSPECTIONS

14. Inspection power
15. Appointment of national inspectors
16. Verification of toxic chemicals, precursors and facilities
17. Powers of international inspector
18. Persons accompanying the international inspector
19. Notice to facilitate inspection
20. Minister's certificate
21. Obstruction, other offences against inspector

#### PART V

##### ENFORCEMENT

22. Application for a search warrant
23. Limited use of force
24. Proper identification of persons accompanying international inspector
25. Obstruction etc. of international inspector

## PART VI

## ADMINISTRATION

26. National Authority

## PART VII

## MISCELLANEOUS PROVISIONS

27. The Pesticides and Toxic Chemicals Control Act
28. Confidentiality
29. Self-incrimination not a bar to giving information
30. Regulations

## **CHAPTER 19.19**

### **CHEMICAL WEAPONS (PROHIBITION AND CONTROL ACT)**

AN ACT TO GIVE EFFECT TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION.

#### **PART I**

##### **PRELIMINARY MATTERS**

###### **Short title.**

**1.** This Act may be cited as the Chemical Weapons (Prohibition and Control) Act.

###### **Interpretation.**

**2.** (1) In this Act, unless the context otherwise requires “authorized officer” includes—

- (a) a national inspector appointed under section 15;
- (b) an international inspector;
- (c) a member of the Royal Saint Christopher and Nevis Police Force;
- (d) any other officer appointed under this Act for carrying out the objectives of this Act;

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on the 13th day of January 1993 and includes the Annexes to the Convention and any amendments to, or substitutions of, that Convention or the Annexes that are, or will become, binding on Saint Christopher and Nevis;

“chemical weapons” means the following whether construed 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 paragraph (a), which would be released as a result of the employment of such munitions and devices; and
- (c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in paragraph (a);

“international inspector” means a person designated by the Technical Secretariat according to the procedures as set forth in Part II, Section A, of the Verification Annex, to carry out an inspection or visit in accordance with the Convention, and includes any inspection assistant as defined in the Convention;

“Minister” means the Minister with responsibility for National Security;

“national authority” means the Saint Christopher and Nevis Chemical Weapons (Prohibition and Control) Authority established under section 26;

“OCPF” means “other chemical production facility” to which Part IX of the Verification Annex to the Convention applies;

“OPCW” means the Organisation for the Prohibition of Chemical Weapons established under Article VIII of the Convention;

“precursor” means a chemical reactant which is used or may be used in the production—

- (a) at any stage; and
- (b) by whatever method of a toxic chemical;

“purposes not prohibited under the Convention” means—

- (a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
- (b) protective purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) legitimate 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 where the main object is to cause death, permanent harm or temporary incapacity to humans or animals; and
- (d) law enforcement purposes particularly in domestic riot control;

“riot control agent” means a chemical not listed in any of the Schedules, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure;

“Schedules 1, 2 and 3 chemicals and precursors” means the chemicals and precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals to the Convention;

“toxic chemical” means any chemical which through its chemical action on life processes can cause temporary incapacitation, death, or permanent harm to humans or animals; regardless of—

- (a) the origin or method of production of the chemical; and
- (b) whether the chemical is produced in a facility, munitions or elsewhere;

(2) Terms and expressions used and not defined in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

### **Application of Act to aircrafts, ships, vessels and extra-territoriality.**

3. (1) This Act extends to Saint Christopher and Nevis aircraft, and Saint Christopher and Nevis ships or vessels.

(2) This Act may extend to acts done or omitted to be done by Saint Christopher and Nevis citizens outside of Saint Christopher and Nevis.

**Discretion must accord with obligations.**

4. A person exercising a power or discretion conferred under this Act shall have regard to the obligations of Saint Christopher and Nevis under the Convention.

## PART II

## OFFENCES

**Development, production, stockpiling, etc. of chemical weapons.**

5. A person commits an offence who intentionally or recklessly—

- (a) develops, produces, otherwise acquires, stockpiles, or retains chemical weapons; or
- (b) transfers, directly or indirectly, chemical weapons to another person; or
- (c) uses chemical weapons; or
- (d) engages in any military preparations to use chemical weapons; or
- (e) designs or constructs a chemical weapons production facility; or
- (f) modifies facilities or materials of any kind with the purpose of carrying out an activity in contravention of this Act; or
- (g) assists, encourages, or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention,

and is liable on conviction on indictment to imprisonment for life or a fine not exceeding one million dollars.

**Forfeiture of chemical weapons.**

6. (1) If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained or transferred in contravention of section 5 of this Act, the chemical weapon shall be forfeited to the Government of Saint Christopher and Nevis.

(2) An officer of the Government or other qualified person duly authorised by the Minister or a member of the Royal Saint Christopher and Nevis Police Force may, without a warrant, seize a chemical weapon that is forfeited or that he has reasonable grounds to believe to be forfeited to Saint Christopher and Nevis under subsection (1).

(3) A chemical weapon that is seized pursuant to subsection (2), shall be stored with all the appropriate safeguards pending disposal, and then disposed of upon the instructions of the Minister, taking into account the provisions of Articles IV (9) and VII (3).

**Use of riot control agents as method of warfare.**

7. A person commits an offence who intentionally or recklessly uses riot control agents as a method of warfare, and is liable on conviction on indictment to imprisonment for life or a fine not exceeding one million dollars.

**Intentional or reckless use of Schedule 1 chemical.**

8. (1) A person commits an offence who intentionally or recklessly produces, acquires, stockpiles, retains, or uses any Schedule 1 chemical without the consent of the Minister, and is liable on indictment to imprisonment for a term not exceeding twenty years or a fine not exceeding one million dollars.

(2) In determining whether or not to give consent under subsection (1), the Minister shall apply the provisions of Part VI of the Verification Annex of the Convention, including the restriction that the purposes to which a Schedule 1 chemical can be applied are strictly limited to research, medical, pharmaceutical or protective purposes, and the type and quantity of the chemical shall be justifiable for such purpose.

**Prohibition of importation of Schedules 1, 2 and 3 chemicals.**

9. (1) Except with the consent of the Minister, the importation into Saint Christopher and Nevis, and the exportation from Saint Christopher and Nevis, of any Schedules 1, 2 and 3 chemicals and precursors is hereby prohibited.

(2) In determining whether or not to give consent under subsection (1), the Minister shall apply the restrictions on transfer set out in Parts VI to VIII of the Verification Annex of the Convention.

(3) A person commits an offence who knowingly imports or exports any chemical or precursor in contravention of subsection (1) of this section, and is liable on indictment to imprisonment for a term not exceeding ten years or a fine not exceeding five hundred thousand dollars.

**Application of Customs (Control and Management) Act.**

10. All the provisions of the Customs (Control and Management) Act, Cap. 20.04, that apply with respect to prohibited imports and prohibited exports (except the penalty for an offence under the provisions of that Act), shall extend and apply with respect to chemicals and precursors whose importation and exportation is prohibited by section 9 of this Act, in all respects as if the importation or exportation of the goods were prohibited under the Customs Act.

## PART III

## INFORMATION AND DOCUMENTS

**Notification, keeping of records etc. relating to chemicals.**

11. (1) Any person who produces, acquires, retains, transfers, or uses toxic chemicals or their precursors to which any provision of Parts VI to IX of the Verification Annex of the Convention apply shall—

- (a) notify the Minister of the chemicals and, as the case may be, the facility, as soon as practicable after this Act commences, by giving written notice in a form approved by the Minister, containing such information as is required by the form; and
- (b) keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put; and

- (c) prepare, from those records, periodic reports relating to the chemicals and the facility in a form approved by the Minister; and
- (d) send those periodic reports to the Minister at intervals prescribed by the Minister.

(2) The records and reports referred to under subsection (1) (b) to (d) of this section must be sufficient to satisfy the Minister that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.

(3) A person who refuses or fails, without reasonable excuse, to comply with subsection (1) of this section commits an offence, and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year.

#### **Request by Minister for provision of information.**

**12.** (1) The Minister may, by written notice given to a person whom the Minister believes on reasonable grounds, has information or documents relevant to the enforcement of this Act, request that person to provide the information or documents to the Minister.

(2) A person who receives a notice referred to in subsection (1) shall provide the requested information or documents to the Minister in the form and within the time specified in the notice.

(3) A person who, without reasonable excuse, fails to comply with a notice under this section to the extent that the person is capable of complying with it commits an offence and is liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year.

(4) The power of the Minister under this section to require a person to give information or documents to the Minister is in addition to any obligation to give information or documents that the person may have under section 11 of this Act.

#### **Making of false or misleading statements.**

**13.** A person commits an offence who, in any document prepared pursuant to this Part of the Act, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular, and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year.

### PART IV

#### INSPECTIONS

#### **Inspection power.**

**14.** For the purposes of this Part—

- (a) “an inspection power” means a power to—
  - (i) enter and search premises or a facility;
  - (ii) inspect or examine a matter or thing;

- (iii) take samples of a matter or thing;
  - (iv) measure a matter or thing;
  - (v) examine a document, including a record kept in accordance with the requirements of this Act, the Regulations or conditions of a permit;
  - (vi) take extracts from, or make copies of, a document, including a record of a kind referred to in paragraph (v) or make images of any thing by any means;
  - (vii) operate any equipment, including electronic equipment, located at the premises or facility if the inspector believes, on reasonable grounds, that the equipment can be operated without damaging it;
  - (viii) take onto premises or a facility any equipment or material that is reasonably required for the purpose of exercising a power under any of the above paragraphs;
  - (ix) question personnel working on the site for the purposes of this Act; or
  - (xi) do any other act or thing necessary or convenient to be done to carry out an inspection.
- (b) “purposes of compliance” means—
- (i) determining whether the provisions of this Act and any regulations made thereunder have been or are being complied with at any premises;
  - (ii) determining whether the conditions applicable to a license have been or are being complied with by the holder of a license; or
  - (iii) ensuring the proper functioning at any premises of any monitoring equipment installed in the course of an international compliance inspection or under a facility agreement between Saint Christopher and Nevis and the OPCW.

#### **Appointment of national inspectors.**

**15.** (1) The Minister may appoint national inspectors for purposes of compliance under this Act.

(2) Notwithstanding the power of the Minister in subsection (1), an authorized officer shall be a national inspector for the purposes of this Act.

(3) A national inspector may—

- (a) with the consent of the person in control of any premises; or
- (b) under a warrant issued under section 22 in respect of any premises,

enter the premises and exercise, on or in the premises, any inspection power for purposes of compliance.

#### **Verification of toxic chemicals, precursors and facilities.**

**16.** All Schedules 1, 2 and 3 chemicals and precursors, the facilities related to such chemicals, OCPFs, and other places as provided for in the Verification Annex to the Convention, are hereby declared to be subject to verification measures as provided in the Convention.

**Powers of international inspector.**

17. (1) An international inspector may—
- (a) enter any place in Saint Christopher and Nevis—
    - (i) in respect of which any provision of Parts VI to IX of the Verification Annex of the Convention applies; or
    - (ii) that is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention; or
    - (iii) in respect of which an investigation under paragraph 9 of Article X of the Convention has been initiated; and
  - (b) enter and inspect the premises pursuant to—
    - (i) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence; and
    - (ii) in the case of any facility, any applicable facility agreement between St. Christopher and Nevis and the OPCW; and
  - (c) exercise, in connection with any inspection, any function contemplated, and power provided for in—
    - (i) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence; and
    - (ii) in the case of any facility, any applicable facility agreement between St. Christopher and Nevis and the OPCW.

**Persons accompanying the international inspector.**

18. In order to facilitate inspections, an international inspector may be accompanied by—
- (a) a national inspector;
  - (b) any member of the Royal Saint Christopher and Nevis Police Force or any other authorized officer appointed under this Act;
  - (c) an appropriate person appointed by the Minister to assist the inspector; or
  - (d) an observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention.

**Notice to facilitate inspection.**

19. (1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under the Convention.
- (2) Every person commits an offence who wilfully fails to comply with any direction given by the Minister under this section, and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

**Minister's certificate.**

20. The Minister may issue a certificate identifying any international inspector or other person authorised to accompany or assist any international inspector.

**Obstruction, other offences against inspector.**

21. (1) Every person commits an offence who does the following—

- (a) resists, obstructs, intimidates, or assaults an inspector in the execution of his duties under this Act; or
- (b) by any form of inducement, attempts to prevent or prevents an inspector from carrying out his duties under this Act.

(2) A person who commits an offence contrary to subsection (1) is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for six months.

## PART V

## ENFORCEMENT

**Application for a search warrant.**

22. (1) Any member of the Royal Saint Christopher and Nevis Police Force, national inspector or other person appointed under section 20 of this Act, may apply for a search warrant where the consent of the person who is in control of any place cannot be obtained.

(2) Subject to subsection (3) of this section, a Magistrate, who is satisfied that there are reasonable grounds for believing that—

- (a) a place referred to in section 17 of this Act meets the conditions for entry described in that section; and
- (b) entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for, in the Convention or any applicable facility agreement; and
- (c) the consent of the person who is in control of the place cannot be obtained,

may issue, unconditionally or subject to conditions, a warrant authorising the entry of the place, at any time within fourteen days of the issue of the warrant, or within such further time as may be specified in the warrant by a national inspector or international inspector and any person authorised to accompany the international inspector, for the purpose of exercising any function contemplated, or any power provided for, in the Convention or any applicable facility agreement.

**Limited use of force.**

23. In executing a warrant, an inspector shall not use force unless accompanied by a police officer and the use of force is specifically authorized in the warrant.

**Proper identification of persons accompanying international inspector.**

24. Every member of the Royal Saint Christopher and Nevis Police Force, or other person appointed under section 20 of this Act, who accompanies an international inspector on any inspection—

- (a) shall carry his or her identification certificate; and
- (b) shall produce it to any person appearing to be in charge of the place entered—
  - (i) on entering the place, if such a person is then present; and
  - (ii) at any reasonable time thereafter, if asked to do so by the person; and,
- (c) if there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, shall, as soon as is practicable after completing the inspection, give an occupier or person in charge of the place a written notice stating that the place has been entered, and specifying the following matters—
  - (i) the time and date of entry;
  - (ii) the circumstance and purpose of entry;
  - (iii) the name of every person entering; and
- (d) shall have a warrant with him or her and produce it if required to do so; and
- (e) where any thing is seized, shall give an occupier or person in charge of the place a written inventory of all things so seized; and
- (f) shall report any offence or suspected offence to the Commissioner of Police as soon as practicable.

**Obstruction etc. of international inspector.**

25. (1) A person commits an offence, who wilfully obstructs, hinders, resists, or deceives any international inspector who is exercising in Saint Christopher and Nevis any function contemplated, or any power provided for, in the Convention and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding six months.

(2) Nothing in this section applies to a refusal to give consent to entry by an international inspector who is not acting pursuant to a search warrant.

## PART VI

## ADMINISTRATION

**National Authority.**

26. (1) There is hereby established a National Authority for the purposes of this Act to be known as the Saint Christopher and Nevis National Chemical Weapons (Prohibition and Control) Authority which shall be responsible for the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

- (2) The National Authority shall consist of the following persons—
- (i) a representative from the Ministry of Foreign Affairs;
  - (ii) a representative from the Pesticides and Toxic Chemicals Board;
  - (iii) a representative from the Ministry of Agriculture;
  - (iv) a representative from the Customs Department;
  - (v) a representative from the Ministry of Health;
  - (vi) a representative from the Ministry of Sustainable Department;
  - (vii) a representative from the Office of the Attorney-General; and
  - (viii) a representative from the Ministry of National Security.
- (3) The functions and duties of the National Authority shall include the following—
- (i) to serve as the national focal point for effective liaison with the OPCW and other States Parties;
  - (ii) to supervise and monitor the enforcement of this Act, through the regime established by this Act, and the regulations issued thereto;
  - (iii) to gather the data to be reported in the initial and annual declarations to the OPCW and to report such data to the OPCW;
  - (iv) to supervise the implementation and enforcement of the Convention;
  - (v) to provide the OPCW and other States Parties with relevant data and information in fulfillment of the obligations of a State Party under the Convention;
  - (vi) to facilitate and cooperate with inspections under the Convention, including accompanying OPCW inspectors on international routine inspections and challenge inspections;
  - (vii) to approve facility agreements further to this Act;
  - (viii) to perform any other tasks assigned to it by the Minister in keeping with the objectives of this Act;
  - (ix) to advise the Minister on matters relevant to this Act and the Convention and to provide any information, which the Minister or other appropriate authorities may require.

## PART VII

### MISCELLANEOUS PROVISIONS

#### **The Pesticides and Toxic Chemicals Control Act.**

**27.** (1) For the purposes of this part a reference to the “Pesticides Act” means the Pesticides and Toxic Chemicals Control Act, Cap. 9.18.

(2) The chemicals listed in the Schedule in the Convention’s Annex on Chemicals shall be designated as controlled products for the purposes of the Pesticides Act.

(3) Where any chemical weapon is so designated pursuant to the provisions of subsection (1), the chemical weapon may only be registered or licensed or otherwise dealt with under the Pesticides Act after the Minister has satisfied the obligations under this Act.

(4) Once the obligations under this Act have been satisfied in relation to the chemical weapon, it may be further dealt with according to the provisions of the Pesticides Act in terms of licensing, storage, transport, packaging, disposal and other treatment.

(5) Inspections that are conducted of Schedules 1, 2 and 3 facilities and OCPFs under this Act shall be without prejudice to any powers of inspection over those facilities as provided for in the Pesticides Act.

#### **Confidentiality.**

**28.** (1) Every person must keep confidential any information that is given pursuant to this Act or the Convention concerning the affairs of another person.

(2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of—

- (a) enabling Saint Christopher and Nevis to fulfil its obligation under the Convention; or
- (b) the enforcement of this Act; or
- (c) dealing with an emergency involving public safety.

(3) Every person who contravenes this section commits an offence, and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year.

#### **Self-incrimination not a bar to giving information.**

**29.** (1) A person is not excused from answering a question or giving any information or document under this Act or the Convention on the ground that to do so may incriminate or tend to incriminate that person.

(2) A self-incriminating statement made or given under this Act or the Convention is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that statement.

#### **Regulations.**

**30.** (1) In order to facilitate the effective working of this Act, the Minister may make regulations as follows—

- (a) providing for any matter that is necessary or desirable for the purpose of implementing the Convention or any agreement that is concluded between Saint Christopher and Nevis and the Organisation pursuant to the Convention;
- (b) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines not exceeding five thousand dollars, that may, on summary conviction, be imposed in respect of any such offence;

- (c) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
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