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1971



Criminal Damage Act 1971

CHAPTER 48

ARRANGEMENT OF SECTIONS

Section

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SCHEDULE—Repeals.

ELIZABETH II



1971 CHAPTER 48

An Act to revise the law of England and Wales as to offences of damage to property, and to repeal or amend as respects the United Kingdom certain enactments relating to such offences; and for connected purposes. [14th July 1971]

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:—

1.—(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence. Destroying or damaging property.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—

- (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged ; and
- (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered ;

shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

2. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out,— Threats to destroy or damage property.

- (a) to destroy or damage any property belonging to that other or a third person ; or

- (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person ;

shall be guilty of an offence.

Possessing anything with intent to destroy or damage property.

3. A person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it—

- (a) to destroy or damage any property belonging to some other person ; or

- (b) to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person ;

shall be guilty of an offence.

Punishment of offences.

4.—(1) A person guilty of arson under section 1 above or of an offence under section 1(2) above (whether arson or not) shall on conviction on indictment be liable to imprisonment for life.

(2) A person guilty of any other offence under this Act shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.

“Without lawful excuse.”

5.—(1) This section applies to any offence under section 1(1) above and any offence under section 2 or 3 above other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Act as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

- (a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances ; or

- (b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 3 above, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property

belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—

(i) that the property, right or interest was in immediate need of protection ; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) above a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

6.—(1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse—

Search for things intended for use in committing offences of criminal damage.

(a) to destroy or damage property belonging to another ;
or

(b) to destroy or damage any property in a way likely to endanger the life of another,

the justice may grant a warrant authorising any constable to search for and seize that thing.

(2) A constable who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid.

(3) The Police (Property) Act 1897 (disposal of property in the possession of the police) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act. 1897 c. 30.

7.—(1) In Schedule 1 to the Magistrates' Courts Act 1952 (indictable offences triable summarily with the consent of the accused when adult), for paragraph 2 there shall be substituted the following paragraph:— Jurisdiction of magistrates' courts. 1952 c. 55.

“ 2. Offences under section 1(1), 2 and 3 of the Criminal Damage Act 1971 ”.

(2) No rule of law ousting the jurisdiction of magistrates' courts to try offences where a dispute of title to property is involved shall preclude magistrates' courts from trying offences under this Act, or any other offences of destroying or damaging property.

Award of compensation on conviction of an offence under s. 1.

8.—(1) On conviction of any person of an offence under section 1 of this Act of destroying or damaging property belonging to another the court may, on application or otherwise, and on being satisfied as to the approximate cost of making good the loss of or damage to the property order him to pay to the person or any of the persons to whom the property belongs or belonged immediately before its destruction or damage such sum by way of compensation in respect of the whole or part of the loss of or damage to the property (not exceeding £400 in the case of a magistrates' court) as the court thinks just.

1968 c. 19.

(2) Any order under this section for the payment of compensation made on conviction on indictment shall be treated for the purposes of sections 30 and 42(1) and (2) of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property; and where by reason of the quashing by the Court of Appeal of a person's conviction any such order under this section does not take effect, and on an appeal to the House of Lords the conviction is restored by that House, the House may make any order under this section which could be made on his conviction by the court which convicted him.

(3) Any order under this section for the payment of compensation made by a magistrates' court shall be suspended—

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court;

(b) where notice of appeal is given within the period so prescribed, until the determination of the appeal.

1970 c. 31.

(4) In Part I of Schedule 9 to the Administration of Justice Act 1970 (costs and compensation awarded against offenders and recoverable like fines imposed by magistrates' courts) after paragraph 9 there shall be inserted the following paragraph:—

“9A. Where under section 8 of the Criminal Damage Act 1971 a court orders the payment of a sum by way of compensation in respect of the whole or part of any loss of or damage to property”.

(5) This section shall be without prejudice to any other enactment which provides for the payment of compensation by a person convicted of an offence of damaging property or otherwise proved to have committed such an offence.

9. A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Act—

Evidence in connection with offences under this Act.

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings;

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Act, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

10.—(1) In this Act “property” means property of a tangible nature, whether real or personal, including money and—

Interpretation.

- (a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
- (b) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

For the purposes of this subsection “mushroom” includes any fungus and “plant” includes any shrub or tree.

(2) Property shall be treated for the purposes of this Act as belonging to any person—

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

- Minor and consequential changes in existing law, and repeals.
1772 c. 24.
(12 Geo. 3).
- 1861 c. 97.
- 1873 c. 60.
- 1923 c. 16.
1965 c. 68.
- 1952 c. 67.
- 1968 c. 60.
- 1968 c. 27.
- 11.—(1) The common law offence of arson is hereby abolished.
- (2) The Dockyards, etc., Protection Act 1772 (under which it is a capital offence to set on fire, burn or otherwise destroy Her Majesty's ships, dockyards, stores, etc.) shall cease to have effect.
- (3) The following provisions of the Malicious Damage Act 1861, that is to say—
- (a) section 28 (flooding mines and destroying, damaging, flooding or obstructing mine shafts, etc.) ; and
- (b) section 29 (destroying, damaging or obstructing the working of mine equipment) ;
- shall cease to have effect.
- (4) In the Schedule to the Extradition Act 1873 (additional list of extradition crimes), for the words " Malicious Damage Act 1861 " there shall be substituted the words " Criminal Damage Act 1971 or the unrepealed provisions of the Malicious Damage Act 1861 " and for the words " the same " there shall be substituted the word " either ".
- (5) For section 9(2) of the Salmon and Freshwater Fisheries Act 1923, as amended by the Salmon and Freshwater Fisheries Act 1965 (unlawfully or maliciously destroying dams, etc. with intent to take or destroy fish), there shall be substituted the following subsection :—
- " (2) No person shall, without lawful excuse, destroy or damage any dam, flood-gate or sluice with intent thereby to take or destroy fish ".
- (6) In paragraph 3 of the Schedule to the Visiting Forces Act 1952 (offences against property in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court) after paragraph (g) (which was inserted by the Theft Act 1968) there shall be added the following paragraph :—
- " (h) the Criminal Damage Act 1971 ".
- (7) In Schedule 1 to the Firearms Act 1968 (which lists the offences to which section 17(2) (possession of firearms when committing or being arrested for specified offences) relates), for paragraph 1 there shall be substituted the following paragraph :—
- " 1. Offences under section 1 of the Criminal Damage Act 1971 ".
- (8) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in column 3 of that

Schedule; and where any such enactment has been applied by or incorporated in any other Act the repeal shall extend so as to repeal that enactment as so applied or incorporated.

(9) Where it appears to the Secretary of State that a local statutory provision is inconsistent with or has become unnecessary in consequence of this Act he may, after consultation with any person appearing to him to be concerned with that provision, by order amend that provision so as to bring it into conformity with this Act or repeal it.

In this subsection "local statutory provision" means a provision of a local Act (including an Act confirming a provisional order) or a provision of a public general Act passed with respect only to a particular area or a particular undertaking or a provision of an instrument made under any such local or public general Act or of an instrument in the nature of a local enactment made under any other Act.

(10) An order made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(11) The repeal by this section or an order made thereunder of any enactment relating to procedure or to the jurisdictional powers of any court shall not affect the operation of that enactment in relation to offences committed before the repeal takes effect or to proceedings for any such offence.

12.—(1) This Act shall come into force at the expiration of the period of three months beginning with the day on which it is passed. Short title
and extent.

(2) This Act may be cited as the Criminal Damage Act 1971.

(3) Except as provided by subsections (4) to (6) below, this Act does not extend to Scotland or Northern Ireland.

(4) Section 11(4) of this Act extends to Scotland and Northern Ireland.

(5) Section 11(5) of this Act extends to so much of the river Esk, with its banks and tributary streams up to their source, as is situated in Scotland, but does not apply to the river Tweed within the meaning of the expression "the river" as defined by the Tweed Fisheries Amendment Act 1859 and any byelaw 1859 c. clxx. amending that definition.

(6) Part II of the Schedule to this Act and so much of section 11(8) above as relates thereto extend to Scotland; and section 11(2) of this Act, Part III of that Schedule and so much of section 11(8) as relates thereto extend to Scotland and Northern Ireland.

Sections 11 and
12.

SCHEDULE

REPEALS

PART I

REPEALS EXTENDING TO ENGLAND AND WALES ONLY

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Vict. c. 47.	The Metropolitan Police Act 1839.	In section 54, in paragraph 10, the words from "or wilfully break" onwards.
2 & 3 Vict. c. 71.	The Metropolitan Police Courts Act 1839.	Section 38.
3 & 4 Vict. c. 92.	The Non-Parochial Registers Act 1840.	In section 8, the words from "shall wilfully destroy" to "any part thereof, or".
8 & 9 Vict. c. 16.	The Companies Clauses Consolidation Act 1845.	In section 146, the words "or injure".
8 & 9 Vict. c. 20.	The Railways Clauses Consolidation Act 1845.	In section 95, the words "deface, or destroy".
9 & 10 Vict. c. 39.	The Chelsea Bridge and Embankment Act 1846.	Section 85.
10 & 11 Vict. c. 89.	The Town Police Clauses Act 1847.	Section 67.
16 & 17 Vict. c. 46.	The Westminster Bridge Act 1853.	Section 14.
24 & 25 Vict. c. 97.	The Malicious Damage Act 1861.	The whole Act, except sections 35, 36, 47, 48, 58 and 72.
4 & 5 Geo. 5. c. 58.	The Criminal Justice Administration Act 1914.	Section 14.
13 & 14 Geo. 5. c. 16.	The Salmon and Freshwater Fisheries Act 1923.	Section 10.
15 & 16 Geo. 5. c. 71.	The Public Health Act 1925.	In section 19(2), the words "destroys" and "or defaces".
23 & 24 Geo. 5. c. 51.	The Local Government Act 1933.	In section 289, the words "destroys" and "injures or defaces".
15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.	The Magistrates' Courts Act 1952.	Section 127(1). In Schedule 1, paragraph 2.
7 & 8 Eliz. 2. c. 25.	The Highways Act 1959.	In section 103A (as inserted by section 23 of the Highways Act 1971), subsection (4). In section 117, subsections (1)(e) and (2)(a) and (b) and in subsection (2)(c), the word "damages".
9 & 10 Eliz. 2. c. 64. 1964 c. 76.	The Public Health Act 1961. The Malicious Damage Act 1964.	In section 44(5), the words "or damages". The whole Act.

Session and Chapter	Short Title	Extent of Repeal
1967 c. 58.	The Criminal Law Act 1967.	In Schedule 1, in List A, item 1 in Division I and item 2 in Division II. In Schedule 2, paragraph 7 and in paragraph 8, subparagraph (a) and the word "(b)".
1967 c. 80.	The Criminal Justice Act 1967.	In Part I of Schedule 3, the entries relating to the Malicious Damage Act 1861 and the Criminal Justice Administration Act 1914.
1968 c. 27.	The Firearms Act 1968.	In section 16, the words "or cause serious injury to property" in both places where they occur, and the words "to person or property". In Schedule 1, in paragraph 9, the words from "other than" onwards.
1969 c. 54.	The Children and Young Persons Act 1969.	In section 3(6), the last paragraph.
1971 c. 41.	The Highways Act 1971.	In section 23(1), subsection (4) of the section inserted in the Highways Act 1959 as section 103A.

PART II

REPEALS EXTENDING TO ENGLAND, WALES AND SCOTLAND

Session and Chapter	Short Title	Extent of Repeal
4 & 5 Vict. c. 30.	The Ordnance Survey Act 1841.	In section 7, the words from "or shall wilfully" to "bolt, or mark".
10 & 11 Vict. c. 65.	The Cemeteries Clauses Act 1847.	Section 58.
38 & 39 Vict. c. 17.	The Explosives Act 1875.	In section 82, the words "injures, or defaces".
62 & 63 Vict. c. 19.	The Electric Lighting (Clauses) Act 1899.	In section 19 of the Gasworks Clauses Act 1847 as set out in paragraph 19 of the Appendix to the Schedule, the words "destroy or damage".
18 & 19 Geo. 5. c. 32.	The Petroleum (Consolidation) Act 1928.	In section 2(4)(b), the words "injures, or defaces".
1 & 2 Eliz. 2. c. 36.	The Post Office Act 1953.	In section 57, the words "or destroys".
2 & 3 Eliz. 2. c. 70.	The Mines and Quarries Act 1954.	In section 162, the words "injures or defaces".

Session and Chapter	Short Title	Extent of Repeal
7 & 8 Eliz. 2. c. 7.	The Manoeuvres Act 1958.	Section 8(2)(b).
9 & 10 Eliz. 2. c. 34.	The Factories Act 1961.	In section 138(4), the words "injures or defaces".
1963 c. 41.	The Offices, Shops and Railway Premises Act 1963.	In section 69, the words "injures or defaces".
1964 c. 71.	The Trading Stamps Act 1964.	In section 7(4), the words "injures or defaces".
1967 c. 80.	The Criminal Justice Act 1967.	In Part I of Schedule 3, the entry relating to section 58 of the Cemeteries Clauses Act 1847.

PART III

REPEALS EXTENDING TO THE UNITED KINGDOM

Session and Chapter	Short Title	Extent of Repeal
12 Geo. 3. c. 24.	The Dockyards, etc. Protection Act 1772.	The whole Act.
33 & 34 Vict. c. 52.	The Extradition Act 1870.	In Schedule 1, the word "Arson".
2 & 3 Geo. 6. c. 38.	The Ministry of Supply Act 1939.	In Part II of the Schedule, the words "The Dockyards, etc. Protection Act 1772".

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