

SCHEDULES

SCHEDULE 17

Section 75

OFFENCES RELATING TO NUCLEAR MATERIAL AND NUCLEAR FACILITIES

PART 1

AMENDMENTS OF NUCLEAR MATERIAL (OFFENCES) ACT 1983

1 The Nuclear Material (Offences) Act 1983 (c. 18) has effect subject to the following amendments.

2 (1) Section 1 (extended scope of certain offences) is amended as follows.

(2) In subsection (1)(b) (offences under certain enactments) for “section 78 of the Criminal Justice (Scotland) Act 1980” substitute “section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995”.

(3) After subsection (1) insert—

“(1A) If—

- (a) a person, whatever his nationality, does outside the United Kingdom an act directed at a nuclear facility, or which interferes with the operation of such a facility,
- (b) the act causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material, and
- (c) had he done that act in any part of the United Kingdom, it would have made him guilty of an offence mentioned in subsection (1)(a) or (b) above,

the person shall in any part of the United Kingdom be guilty of such of the offences mentioned in subsection (1)(a) and (b) as are offences of which the act would have made him guilty had he done it in that part of the United Kingdom.”

(4) Omit subsection (2) (definition of “act”).

3 After section 1 insert—

“1A Increase in penalties for offences committed in relation to nuclear material etc.

(1) If—

- (a) a person is guilty of an offence to which subsection (2), (3) or (4) applies, and
 - (b) the penalty provided by this subsection would not otherwise apply,
- the person shall be liable, on conviction on indictment, to imprisonment for life.

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- (2) This subsection applies to an offence mentioned in section 1(1)(a) or (b) where the act making the person guilty of the offence was done in England and Wales or Northern Ireland and either—
- (a) the act was done in relation to or by means of nuclear material, or
 - (b) the act—
 - (i) was directed at a nuclear facility, or interfered with the operation of such a facility, and
 - (ii) caused death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material.
- (3) This subsection applies to an offence mentioned in section 1(1)(c) or (d) where the act making the person guilty of the offence—
- (a) was done in England and Wales or Northern Ireland, and
 - (b) was done in relation to or by means of nuclear material.
- (4) This subsection applies to an offence mentioned in section 1(1)(a) to (d) where the offence is an offence in England and Wales or Northern Ireland by virtue of section 1(1) or (1A).

1B Offences relating to damage to environment

- (1) If a person, whatever his nationality, in the United Kingdom or elsewhere contravenes subsection (2) or (3) he is guilty of an offence.
- (2) A person contravenes this subsection if without lawful authority—
- (a) he receives, holds or deals with nuclear material, and
 - (b) he does so either—
 - (i) intending to cause, or for the purpose of enabling another to cause, damage to the environment by means of that material, or
 - (ii) being reckless as to whether, as a result of his so receiving, holding or dealing with that material, damage would be caused to the environment by means of that material.
- (3) A person contravenes this subsection if without lawful authority—
- (a) he does an act directed at a nuclear facility, or which interferes with the operation of such a facility, and
 - (b) he does so either—
 - (i) intending to cause, or for the purpose of enabling another to cause, damage to the environment by means of the emission of ionising radiation or the release of radioactive material, or
 - (ii) being reckless as to whether, as a result of his act, damage would be caused to the environment by means of such an emission or release.
- (4) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.

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

1C Offences of importing or exporting etc. nuclear material: extended jurisdiction

- (1) If a person, whatever his nationality, outside the United Kingdom contravenes subsection (2) below he shall be guilty of an offence.
- (2) A person contravenes this subsection if he is knowingly concerned in—
 - (a) the unlawful export or shipment as stores of nuclear material from one country to another, or
 - (b) the unlawful import of nuclear material into one country from another.
- (3) For the purposes of subsection (2)—
 - (a) the export or shipment as stores of nuclear material from a country, or
 - (b) the import of nuclear material into a country,is unlawful if it is contrary to any prohibition or restriction on the export, shipment as stores or import (as the case may be) of nuclear material having effect under or by virtue of the law of that country.
- (4) A statement in a certificate issued by or on behalf of the government of a country outside the United Kingdom to the effect that a particular export, shipment as stores or import of nuclear material is contrary to such a prohibition or restriction having effect under or by virtue of the law of that country, shall be evidence (in Scotland, sufficient evidence) that the export, shipment or import was unlawful for the purposes of subsection (2).
- (5) In any proceedings a document purporting to be a certificate of the kind mentioned in subsection (4) above shall be taken to be such a certificate unless the contrary is proved.
- (6) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (7) In this section “country” includes territory.

1D Offences under section 1C: investigations and proceedings etc.

- (1) Where the Commissioners for Her Majesty’s Revenue and Customs investigate, or propose to investigate, any matter with a view to determining—
 - (a) whether there are grounds for believing that an offence under section 1C above has been committed, or
 - (b) whether a person should be prosecuted for such an offence,the matter is to be treated as an assigned matter within the meaning of CEMA 1979 (see section 1(1) of that Act).
- (2) Section 138 of CEMA 1979 (provisions as to arrest of persons) applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence under section 1C above as it applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence for which he is liable to be arrested under the customs and excise Acts.

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(3) Sections 145 to 148 and 150 to 155 of CEMA 1979 (provisions as to legal proceedings) apply in relation to an offence under section 1C above, and to the penalty and proceedings for the offence, as they apply in relation to offences, penalties and proceedings under the customs and excise Acts.

(4) In this section—

“CEMA 1979” means the Customs and Excise Management Act 1979;

“the customs and excise Acts”, “shipment” and “stores” have the same meanings as in CEMA 1979 (see section 1(1) of that Act).”

4 For section 2 substitute—

“2 Offences involving preparatory acts and threats

(1) If a person, whatever his nationality, in the United Kingdom or elsewhere contravenes subsection (2), (3), (4) or (7) he shall be guilty of an offence.

(2) A person contravenes this subsection if without lawful authority—

- (a) he receives, holds or deals with nuclear material, and
- (b) he does so either—

(i) intending to cause, or for the purpose of enabling another to cause, relevant injury or damage by means of that material, or

(ii) being reckless as to whether, as a result of his so receiving, holding or dealing with that material, relevant injury or damage would be caused by means of that material.

(3) A person contravenes this subsection if without lawful authority—

- (a) he does an act directed at a nuclear facility, or which interferes with the operation of such a facility, and
- (b) he does so either—

(i) intending to cause, or for the purpose of enabling another to cause, relevant injury or damage by means of the emission of ionising radiation or the release of radioactive material, or

(ii) being reckless as to whether, as a result of his act, relevant injury or damage would be caused by means of such an emission or release.

(4) A person contravenes this subsection if he—

- (a) makes a threat of a kind falling within subsection (5), and
- (b) intends that the person to whom the threat is made shall fear that it will be carried out.

(5) A threat falls within this subsection if it is a threat that the person making it or any other person will cause any of the consequences set out in subsection (6) either—

- (a) by means of nuclear material, or
- (b) by means of the emission of ionising radiation or the release of radioactive material resulting from an act which is directed at a

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nuclear facility, or which interferes with the operation of such a facility.

- (6) The consequences mentioned in subsection (5) are—
- (a) relevant injury or damage, or
 - (b) damage to the environment.
- (7) A person contravenes this subsection if, in order to compel a State, international organisation or person to do, or abstain from doing, any act, he threatens that he or any other person will obtain nuclear material by an act which, whether by virtue of section 1(1) above or otherwise, is an offence mentioned in section 1(1)(c) above.
- (8) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.
- (9) In this section references to relevant injury or damage are references to death or to injury or damage of a type which constitutes an element of any offence mentioned in section 1(1)(a) or (b) above.

2A Inchoate and secondary offences: extended jurisdiction

- (1) If a person, whatever his nationality—
- (a) does an act outside the United Kingdom, and
 - (b) his act, if done in any part of the United Kingdom, would constitute an offence falling within subsection (2),
- he shall be guilty in that part of the United Kingdom of the offence.
- (2) The offences are—
- (a) attempting to commit a nuclear offence;
 - (b) conspiring to commit a nuclear offence;
 - (c) inciting the commission of a nuclear offence;
 - (d) aiding, abetting, counselling or procuring the commission of a nuclear offence.
- (3) In subsection (2) a “nuclear offence” means any of the following (wherever committed)—
- (a) an offence mentioned in section 1(1)(a) to (d) above (other than a blackmail offence), the commission of which is (or would have been) in relation to or by means of nuclear material;
 - (b) an offence mentioned in section 1(1)(a) or (b) above, the commission of which involves (or would have involved) an act—
 - (i) directed at a nuclear facility, or which interferes with the operation of such a facility, and
 - (ii) which causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material;
 - (c) an offence under section 1B, 1C or 2(1) and (2) or (3) above;
 - (d) an offence under section 50(2) or (3), 68(2) or 170(1) or (2) of the Customs and Excise Management Act 1979 the commission of which is (or would have been) in connection with a prohibition

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or restriction relating to the exportation, shipment as stores or importation of nuclear material;

- (e) for the purposes of subsection (2)(b) to (d)—
 - (i) a blackmail offence, the commission of which is in relation to or by means of nuclear material;
 - (ii) an offence under section 2(1) and (4) or (7) above;
 - (iii) an offence of attempting to commit an offence mentioned in paragraphs (a) to (d).

(4) In subsection (3) “a blackmail offence” means—

- (a) an offence under section 21 of the Theft Act 1968,
- (b) an offence under section 20 of the Theft Act (Northern Ireland) 1969, or
- (c) an offence of extortion.

(5) In subsection (2)(c) the reference to incitement is—

- (a) a reference to incitement under the law of Scotland, or
- (b) in relation to any time before the coming into force of Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to England and Wales or Northern Ireland, a reference to incitement under the common law of England and Wales or (as the case may be) of Northern Ireland.”

5 After section 3 (supplemental) insert—

“3A Application to activities of armed forces

- (1) Nothing in this Act applies in relation to acts done by the armed forces of a country or territory—
 - (a) in the course of an armed conflict, or
 - (b) in the discharge of their functions.
- (2) If in any proceedings a question arises whether an act done by the armed forces of a country or territory was an act falling within subsection (1), a certificate issued by or under the authority of the Secretary of State and stating that it was, or was not, such an act shall be conclusive of that question.
- (3) In any proceedings a document purporting to be such a certificate as is mentioned in subsection (2) shall be taken to be such a certificate unless the contrary is proved.”

6 (1) Section 6 (material to which the Act applies) is amended as follows.

(2) Before subsection (1) insert—

“(A1) This section applies for the purposes of this Act.”

(3) In subsection (1), omit “in this Act”.

(4) After subsection (1) insert—

“(1A) “A nuclear facility” means a facility (including associated buildings and equipment) used for peaceful purposes in which nuclear material is produced, processed, used, handled, stored or disposed of.

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

- (1B) For the purposes of subsections (1) and (1A)—
- (a) nuclear material is not used for peaceful purposes if it is used or retained for military purposes, and
 - (b) a facility is not used for peaceful purposes if it contains any nuclear material which is used or retained for military purposes.”
- (5) In subsection (2) (question whether or not nuclear material used for peaceful purposes to be determined conclusively by certificate of Secretary of State to that effect) after “material” insert “or facility”.
- (6) For subsection (5) substitute—
- “(5) “Act” includes omission.
- (6) “The Convention” means the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (formerly the Convention on the Physical Protection of Nuclear Material and renamed by virtue of the Amendment adopted at Vienna on 8th July 2005).
 - (7) “The environment” includes land, air and water and living organisms supported by any of those media.
 - (8) “Radioactive material” means nuclear material or any other radioactive substance which—
 - (a) contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation, such as alpha radiation, beta radiation, neutron particles or gamma rays, and
 - (b) is capable, owing to its radiological or fissile properties, of—
 - (i) causing bodily injury to a person,
 - (ii) causing damage or destruction to property,
 - (iii) endangering a person’s life, or
 - (iv) causing damage to the environment.”
- (7) For the sidenote, substitute “Interpretation”.
- 7 In section 7 (application to the Channel Islands, Isle of Man etc.) in subsection (2), for “any colony” substitute “any British overseas territory”.

PART 2

AMENDMENTS OF CUSTOMS AND EXCISE MANAGEMENT ACT 1979

- 8 (1) The Customs and Excise Management Act 1979 (c. 2) is amended as follows.
- (2) In section 1 (interpretation) in subsection (1) insert at the appropriate place—
- ““nuclear material” has the same meaning as in the Nuclear Material (Offences) Act 1983 (see section 6 of that Act);”.
- (3) In section 50 (penalty for improper importation of goods)—
- (a) in subsection (4) (penalty for offence) for “or (5B)” substitute “, (5B) or (5C)”;
 - (b) after subsection (5B) insert—

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- “(5C) In the case of an offence under subsection (2) or (3) above in connection with a prohibition or restriction relating to the importation of nuclear material, subsection (4)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.”
- (4) In section 68 (offences in relation to exportation of prohibited or restricted goods)—
- (a) in subsection (3) (penalty for offence) for “or (4A)” substitute “, (4A) or (4B)”;
 - (b) after subsection (4A) insert—

“(4B) In the case of an offence under subsection (2) above in connection with a prohibition or restriction relating to the exportation or shipment as stores of nuclear material, subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.”
- (5) In section 170 (penalty for fraudulent evasion of duty, etc.)—
- (a) in subsection (3) (penalty for offence) for “or (4B)” substitute “, (4B) or (4C)”;
 - (b) after subsection (4B) insert—

“(4C) In the case of an offence under subsection (1) or (2) above in connection with a prohibition or restriction relating to the importation, exportation or shipment as stores of nuclear material, subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.”
- 9 (1) Her Majesty may by Order in Council provide for any provisions of section 1, 50, 68 or 170 of the Customs and Excise Management Act 1979 (c. 2) as amended by paragraph 8 to extend, with or without modifications, to any of the Channel Islands or any British overseas territory.
- (2) Section 147(2) applies in relation to an Order in Council under sub-paragraph (1) as it applies in relation to an order made by the Secretary of State.