
STATUTORY INSTRUMENTS

2001 No. 3499

LANDMINES

The Landmines Act 1998 (Overseas Territories) Order 2001

Made - - - - 31st October 2001

Coming into force - - 14th November 2001

At the Court at Buckingham Palace, the 31st day of October 2001

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 29(4) of the Landmines Act 1998⁽¹⁾ and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Landmines Act 1998 (Overseas Territories) Order 2001 and shall come into force on the 14th day of November 2001.

Extent and construction

2.—(1) The provisions of the Landmines Act 1998, excepted, adapted and modified as in Schedule 1 to this Order, shall extend to the territories listed in Schedule 2 to this Order.

(2) The Landmines Act 1998, as so excepted, adapted and modified, shall:

- (a) in its application to the British Antarctic Territory and the British Indian Ocean Territory, be subject to the further modifications set out in Schedule 3 to this Order;
- (b) in its application to Pitcairn Island, be subject to the further modifications set out in Schedule 4 to this Order;
- (c) in its application to Bermuda, be subject to the further modifications set out in Schedule 5 to this Order;
- (d) in its application to the Turks and Caicos Islands, be subject to the further modifications set out in Schedule 6 to this Order;
- (e) in its application to the Sovereign Base Areas of Akrotiri and Dhekelia, be subject to the further modifications set out in Schedule 7 to this Order.

Interpretation

3.—(1) Except as otherwise provided, any reference in this Order to “the Landmines Act 1998” means that Act as it applies in the United Kingdom; and “the Act” or “this Act” means the Landmines Act 1998 as extended by this Order.

(2) Except as otherwise provided, in the application of the Act to any of the territories to which it is extended, the expression “the Territory” means that territory.

(3) In the Act, “Governor” means the Governor or other officer administering the government of the Territory.

(4) In the Act, “justice of the peace” means a justice of the peace or magistrate.

(5) In the Act, “Attorney General” means the Attorney General of the Territory or, in his absence, any other person for the time being discharging his functions.

A K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

PROVISIONS OF THE LANDMINES ACT 1998 AS EXCEPTED, ADAPTED, MODIFIED AND EXTENDED TO THE TERRITORIES LISTED IN SCHEDULE 2

INTRODUCTION

Mines and Components to Which Act Applies

- 1.—(1) This section has effect for the purpose of construing this Act.
- (2) An anti-personnel mine is a landmine which—
 - (a) is designed to be detonated by the presence, proximity or contact of an individual; and
 - (b) is capable of incapacitating, injuring or killing an individual.
- (3) A component of an anti-personnel mine is anything designed or adapted to form part of an anti-personnel mine.
- (4) A prohibited object is an anti-personnel mine or any component of an anti-personnel mine.
- (5) A landmine is a munition designed to be placed under, on or near the ground, or some other surface, and to be detonated by the presence, proximity or contact of an individual or vehicle.
- (6) A landmine is not to be taken as designed to be detonated by the presence, proximity or contact of an individual by reason only of being designed to be detonated by the presence, proximity or contact of a vehicle in or on which there would be, or might be, an individual.
- (7) A landmine which—
 - (a) is designed to be detonated by the presence, proximity or contact of a vehicle, but
 - (b) is equipped with an anti-handling device,is not to be taken, by reason only of being so equipped, as designed to be detonated by the presence, proximity or contact of an individual.
- (8) An anti-handling device is a device which—
 - (a) is part of, linked to, attached to or placed under a landmine;
 - (b) is intended to protect the landmine from being neutralised or made less effective or from being moved; and
 - (c) is activated when an attempt is made to tamper with the landmine or otherwise intentionally to disturb it.

OFFENCES RELATING TO ANTI-PERSONNEL MINES

Prohibited Conduct

- 2.—(1) Subject to sections 3 to 6, no person shall—
 - (a) use an anti-personnel mine;
 - (b) develop or produce an anti-personnel mine;
 - (c) participate in the acquisition of a prohibited object;
 - (d) have a prohibited object in his possession; or
 - (e) participate in the transfer of a prohibited object.
- (2) Subject to those sections, no person shall assist, encourage or induce any other person to engage in any conduct mentioned in sub-section (1).
- (3) For the purposes of this Act a person participates in the acquisition of an object if—

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- (a) he acquired the object or enters into a contract to acquire it; or
 - (b) he makes arrangements under which another person either acquires the object or enters into a contract to acquire it.
- (4) For the purposes of this Act a person participates in the transfer of an object if—
- (a) he transfers the object or enters into a contract to transfer it; or
 - (b) he makes arrangements under which another person either transfers the object or enters into a contract to transfer it.
- (5) References in this Act to transferring an object include references to disposing of the object and to delivering it to another person.
- (6) For the purposes of this Act—
- (a) to acquire an object is to buy it, hire it, borrow it or accept it as a gift; and
 - (b) to dispose of an object is to sell it, let it on hire, lend it or give it.
- (7) For the purposes of this Act a person shall not be taken to acquire or dispose of a prohibited object by reason only of his acquisition or disposal of an interest in or right over land containing one or more emplaced anti-personnel mines.
- (8) A person contravening this Section is guilty of an offence and liable, on conviction or indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.

Application of Prohibitions to Places Outside the Territory

- 3.—(1) Section 2(1) applies to conduct in the Territory or elsewhere.
- (2) Section 2(2) applies to assistance, encouragement and inducements in the Territory or elsewhere, and it so applies irrespective of whether the conduct assisted, encouraged or induced takes place, or (if it takes place) will take place, in the Territory or elsewhere.
- (3) Subsections (1) and (2) of section 2, so far as they apply respectively to—
- (a) conduct outside the Territory, and
 - (b) assistance, encouragement and inducements outside the Territory,
- impose prohibitions only on United Kingdom nationals and bodies incorporated under the law of the Territory.
- (4) For the purposes of this section 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 British Nationality Act 1981(2) is a British subject; or
 - (c) a British protected person within the meaning of that Act.
- (5) Proceedings for an offence under section 2 committed outside the Territory may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the Territory.

Conduct that is Permitted

- 4.—(1) In proceedings for an offence under section 2 it is a defence for the accused to prove that his conduct was prevented from being a contravention of that section by the provisions of this section.

(2) 1981 c. 61.

- (2) It is not a contravention of section 2 for a person to participate in the transfer of a prohibited object if—
- (a) he does so with the intention that it will be used only for purposes permitted by subsection (7); and
 - (b) the transfer in question is authorised by the Governor for the purposes of this subsection.
- (3) It is not a contravention of section 2 for a person—
- (a) to participate in the transfer of a prohibited object for the purpose only of enabling it to be destroyed; or
 - (b) to have such an object in his possession for the purpose only (with or without such a transfer) of securing its destruction.
- (4) It is not a contravention of section 2 for a person to have a prohibited object in his possession if—
- (a) he has it in his possession with the intention that it will be used only for purposes permitted by subsection (7); and
 - (b) it is an object which the Governor has authorised him for the purposes of this subsection to have in his possession.
- (5) It is not a contravention of section 2 for a person to participate in the acquisition of a prohibited object if—
- (a) the acquisition that has been made, agreed or arranged is an acquisition by means of a transfer which is permitted by virtue of subsection (2) or (3); and
 - (b) he participates in that acquisition—
 - (i) with the intention that the object will be used only for purposes permitted by subsection (7); or
 - (ii) for the purpose (with or without a further transfer) of enabling the object to be destroyed.
- (6) It is not a contravention of section 2 for a person at any time to assist, encourage or induce any conduct if, at that time, he has reasonable cause to believe—
- (a) that the conduct in question is conduct which is or will be prevented by the provisions of this section from being a contravention of section 2; or
 - (b) that it would be so prevented if it were not otherwise prevented from being such a contravention.
- (7) The purposes permitted by this subsection are—
- (a) the development of techniques of mine detection, mine clearance or mine destruction;
 - (b) training in techniques of mine detection, mine clearance or mine destruction; and
 - (c) the purposes of any proceedings under this Act or of any criminal investigation or other criminal proceedings in which the object in question is or may be evidence.
- (8) No person shall be authorised by the Governor for the purposes of subsection (2) or (4) to transfer, or to have in his possession, any prohibited objects of any description in numbers in excess of what is necessary for the purposes permitted by subsection (7).

International Military Operations

- 5.—(1) A person is not guilty of a section 2 offence in respect of any conduct of his which—
- (a) takes place in the course of, or for the purposes of, a military operation to which this section applies, or the planning of such an operation; and

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- (b) is not, and does not relate to, the laying of anti-personnel mines in contravention of the Ottawa Convention.
- (2) In proceedings for a section 2 offence in respect of any conduct it is a defence for the accused to prove that—
- (a) the conduct was in the course of, or for the purposes of, a military operation or the planning of a military operation;
 - (b) the conduct was not the laying of an anti-personnel mine;
 - (c) at the time of the conduct he believed, on reasonable grounds, that the operation was or would be an operation to which this section applies; and
 - (d) he did not suspect, and had no grounds for suspecting, that the conduct related to the laying of anti-personnel mines in contravention of the Ottawa Convention.
- (3) This Section applies to a military operation if—
- (a) it takes place wholly or mainly outside the United Kingdom and the Territory;
 - (b) it involves the participation both of members of Her Majesty’s armed forces and of members of the armed forces of a State other than the United Kingdom; and
 - (c) the operation is one in the course of which there is or may be some deployment of anti-personnel mines by members of the armed forces of one or more States that are not parties to the Ottawa Convention, but in the course of which such mines are not to be laid in contravention of that Convention.
- (4) If in any proceedings any question arises whether any actual or planned military operation involved the participation of any person, a certificate by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.
- (5) For the purposes of this section the laying of anti-personnel mines is to be taken to be in contravention of the Ottawa Convention in any circumstances other than those where the mines are laid by members of the armed forces of a State that is not a party to that Convention.
- (6) For the purposes of this section a State is a party to the Ottawa Convention if, under Article 16 of that Convention, that State has ratified, accepted or approved that Convention or has acceded to it and either—
- (a) that Convention is in force in relation to that State; or
 - (b) paragraph 1 of Article 1 of that Convention is being provisionally applied in relation to that State in accordance with Article 18.
- (7) In this section—
- “Her Majesty’s armed forces” means any of Her Majesty’s forces, within the meaning of the Army Act 1955(3);
 - “military operation” includes any naval or air force operation; and
 - “operation” includes exercises and other activities.

Other Defences to Offences Under Section 2

6.—(1) In proceedings for an offence under section 2(1)(a), (c), (d) or (e) relating to any object it is a defence for the accused to prove that, at the time of the conduct in question, he neither knew nor suspected, nor had reason to suspect, that it was prohibited object.

(2) In proceedings for an offence under section 2(1)(c), (d) or (e) relating to a component of an anti-personnel mine it is a defence for the accused to prove either—

(3) 1955 c. 18.

- (a) that, at the time of the conduct in question, there was no proposal to use the component as part of an anti-personnel mine; or
 - (b) that, at that time, he neither knew nor suspected, nor had reason to suspect, that there was any proposal to use the component as part of an anti-personnel mine.
- (3) In proceedings for an offence under section 2(1)(d) relating to any object it is a defence for the accused to prove—
- (a) that (having come to know or suspect while the object was in his possession that it was a prohibited object) he took all reasonable steps, as soon as reasonably practicable after he first had that knowledge or suspicion, to inform the Governor, or a police officer, of his knowledge or suspicion; or
 - (b) that he did not have any knowledge or suspicion that the object was a prohibited object, nor any reason for such a suspicion, until he became aware of the Governor's exercise in the case of that object of a power conferred on the Governor by this Act.
- (4) In proceedings for an offence under section 2(2) it is a defence for the accused to prove that, at the time when he assisted, encouraged or induced the conduct in question, he neither knew nor suspected, nor had reason to suspect, that the conduct related, or might relate, to a prohibited object.

SECURING THE DESTRUCTION OF ANTI-PERSONNEL MINES

Suspicious Objects

7.—(1) If—

- (a) the Governor has grounds to suspect that an object is a prohibited object, and
- (b) it does not appear to him that the only persons in possession of that object are persons whose possession of the object is prevented from being a contravention of section 2 by the provisions of section 4,

the Governor may serve a copy of a notice falling within subsection (2) on any person falling within subsection (3).

(2) A notice falling within this subsection is a notice which—

- (a) describes the object and states its location;
- (b) states that the Governor suspects that the object is a prohibited object and gives the reasons for his suspicion;
- (c) states that he is considering whether to secure its destruction under sections 8 to 10;
- (d) states that any person may make representations that the object is not a prohibited object or is lawfully in his possession; and
- (e) states that a person on whom the notice is served and who has the object in his possession must not relinquish possession before a date specified in the notice.

(3) The persons falling within this subsection are—

- (a) any person who appears to the Governor to have the object in his possession; and
- (b) any person not falling within paragraph (a) who appears to the Governor to have an interest which the Governor believes will be materially affected by the service of the notice.

Power to Remove or Immobilise Objects

8.—(1) If the Governor has reasonable cause to believe—

- (a) that an object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this section,

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- (b) that the object is a prohibited object, and
- (c) that the case is not one where the only persons in possession of that object are persons whose possession of the object is prevented from being a contravention of section 2 by the provisions of section 4,

the Governor may authorise a person to enter the premises and to search them.

(2) If (whatever the nature of the premises concerned) a justice of the peace is satisfied, on information on oath, that there is reasonable cause to believe that there are grounds for issuing a warrant under this sub-section in relation to any premises he may issue a warrant in writing authorising a person acting under the authority of the Governor 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.

(3) There are grounds for issuing a warrant under subsection (2) in relation to any premises if—

- (a) a prohibited object is on the premises; and
- (b) the case is not one where the only persons in possession of that object are persons whose possession of the object is prevented from being a contravention of section 2 by the provisions of section 4.

(4) A person who acts under an authorisation or warrant under subsection (1) or (2) may take with him such other persons and such other equipment as appear to him to be necessary.

(5) Subject to subsection (6), if a person enters premises under an authorisation or warrant under subsection (1) or (2) and a prohibited object is found there, he may make the object safe and—

- (a) he may seize and remove it if it is reasonably practicable to do so; or
- (b) he may, in any other case, affix a warning to the object, or in a conspicuous position to something near the object, stating that the object is not to be moved or interfered with before the date specified in the warning.

(6) A person shall not exercise the powers conferred by subsection (5) if he is satisfied—

- (a) that the object is in the possession of one or more persons; and
- (b) that that person, or each of those persons, is a person whose possession of the object is prevented from being a contravention of section 2 by the provisions of section 4.

(7) For the purposes of subsection (5) an object is made safe if, without being destroyed, it is prevented from being an immediate danger (by the disconnection of a detonator or otherwise).

(8) If the authorisation or warrant so provides, the powers conferred on any person by an authorisation or warrant under subsection (1) or (2) shall be exercisable only in the presence of a police officer.

(9) This section applies whether or not any copy of a notice has been served under section 7.

Power to destroy removed objects

9.—(1) This section applies if an object is removed from premises under section 8, and for the purpose of this section:

- (a) the first six-month period is the period of six months beginning with the day after the removal; and
- (b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.

(2) If at any time in the first six-month period—

- (a) any person appears to the Governor to have had the object in his possession immediately before its removal, or

(b) any person not falling within paragraph (a) appears to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction, the Governor must serve on that person a copy of a notice falling within subsection (3).

- (3) A notice falling within this subsection is a notice which—
- (a) describes the object and states its location;
 - (b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;
 - (c) states that the person on whom the copy of the notice is served may object to the Governor's proposal; and
 - (d) states that an objection (if made)—
 - (i) must be made in writing to the Governor before such date as is specified in the notice; and
 - (ii) must state why the object should not be destroyed.

(4) If at any time in the second six-month period the Governor decides that the object should be destroyed, he may authorise a person to destroy it.

- (5) Before he reaches a decision under subsection (4) the Governor must—
- (a) allow any person on whom a copy of a notice has been served under subsection (2) time to respond; and
 - (b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

(6) If an object is removed from premises under section 8 and destroyed under this section, the Governor may recover from any person who had possession of the object immediately before its removal any costs reasonably incurred by the Governor in connection with the removal and destruction.

- (7) If—
- (a) an object is removed from premises under section 8, and
 - (b) at the end of the second six-month period the Governor has not authorised the destruction of the object, and
 - (c) a person had possession of the object immediately before its removal,

the Governor must return the object to the person mentioned in paragraph (c) or, if there is more than one, to such of them as the Governor thinks appropriate.

Power to Enter Premises and Destroy Objects

10.—(1) This section applies if a warning has been affixed under section 8, and for the purposes of this section—

- (a) the first six months of the warning is the period of six months beginning with the day after the warning was affixed; and
- (b) the second six months of the warning is the period of six months beginning with the day after the first six months of the warning ends.

- (2) If at any time in the first six months of the warning—
- (a) any person appears to the Governor to have had the object in his possession immediately before the warning was affixed, or
 - (c) any person not falling within paragraph (a) appear to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction,

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the Governor must serve on that person a copy of a notice falling within subsection (3).

- (3) A notice falling within this subsection is a notice which—
- (a) describes the object and states its location;
 - (b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;
 - (c) states that the person on whom the copy of the notice is served may object to the Governor's proposal; and
 - (d) states that an objection (if made)—
 - (i) must be made in writing to the Governor before such date as is specified in the notice; and
 - (ii) must state why the object should not be destroyed.

(4) If at any time in the second six months of the warning the Governor decides that the object should be destroyed, it may be destroyed as provided by subsections (6) to (10).

- (5) Before he reaches a decision under subsection (4) the Governor must—
- (a) allow any person on whom a copy of a notice has been served under subsection (2) time to respond, and
 - (b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

- (6) If—
- (a) at any time in the second six months of the warning the Governor decides that the object should be destroyed, and
 - (b) the object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this subsection,

the Governor may authorise a person to enter the premises and to destroy the object if it is found there.

(7) If (whatever the nature of the premises concerned) a justice of the peace is satisfied, on information on oath, that a decision of the Governor for the destruction of an object provides grounds for issuing a warrant in relation to any premises, he may issue a warrant in writing authorising a person acting under the authority of the Governor 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 destroy the object if it is found there.

(8) For the purposes of subsection (7) a decision of the Governor for the destruction of an object provides grounds for issuing a warrant in relation to any premises if—

- (a) the premises are premises where a warning has been affixed under section 8 as respects any object; and
- (b) the Governor has decided, at any time in the second six months of the warning, that the object should be destroyed.

(9) A person who acts under an authorisation or warrant under subsection (6) or (7) may take with him such other persons and such equipment as appear to him to be necessary.

(10) If the authorisation or the warrant so provides, the powers conferred on any person by an authorisation or warrant under subsection (6) or (7) shall be exercisable only in the presence of a police officer.

(11) Where an object is destroyed under this section, the Governor may recover, from any person who had possession of the object immediately before the warning was affixed under section 8, any costs reasonably incurred by the Governor in connection with the destruction.

Compensation for Destruction

11.—(1) This section applies if a person claims that—

- (a) an object has been destroyed under section 9 or 10;
- (b) he had an interest which was materially affected by the destruction;
- (c) he sustained loss as a result of the destruction; and
- (d) no copy of a notice was served on him under the section concerned (whether or not one was served on any other person).

(2) If—

- (a) the person concerned makes an application under this Section to the supreme court of the Territory, and
- (b) the court finds that his claim is justified,

the court may order the Governor to pay to the applicant such amount (if any) by way of compensation as the court considers just.

(3) If the court believes that the object would have been destroyed even if a copy of a notice had been served on the applicant under the section concerned, the court must not order compensation to be paid under this section.

Offences Relating to Destruction etc.

12.—(1) A person is guilty of an offence if—

- (a) a copy of a notice has been served on him under section 7;
- (b) the notice related to an object in his possession at the time the copy was served;
- (c) he relinquishes possession of the object before the date specified under section 7(2)(e); and
- (d) he has no reasonable excuse for so relinquishing possession.

(2) A person is guilty of an offence if he wilfully obstructs another in the doing by that other of any of the following—

- (a) entering or searching premises under an authorisation given or warrant issued under section 8(1) or (2) or 10(6) or (7);
- (b) making an object safe, seizing or removing an object, or affixing a warning, under section 8(5);
- (c) destroying an object under an authorisation given under section 9(4) or 10(6) or (7);
- (d) attempting to do anything mentioned in paragraphs (a) to (c).

(3) A person is guilty of an offence if—

- (a) a warning relating to an object has been affixed under section 8(5);
- (b) he interferes with the warning or, before the date specified in the warning, moves or interferes with the object; and
- (c) he has no reasonable excuse for doing so.

(4) A person guilty of an offence under any of the preceding provisions of this section is liable—

- (a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a copy of a notice served under section 7, 9 or 10 is guilty of an offence and liable—

- (a) on summary conviction, to a fine of an amount not exceeding \$5,000 or its equivalent;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

FACT-FINDING MISSIONS UNDER THE OTTAWA CONVENTION

Rights of Entry etc for Fact-Finding Missions

13.—(1) If it is proposed that any of the functions of a fact-finding mission should be carried out in the Territory, the Governor may issue an authorisation under this Section in respect of that mission.

(2) An authorisation under this section shall—

- (a) contain a description of the area of the Territory (the “specified area”) in which the fact-finding mission is to carry out functions; and
- (b) state the names of the members of the mission.

(3) Such an authorisation shall have the effect of authorising the members of the fact-finding mission—

- (a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are required for the purposes of the carrying out of the mission’s functions under the Ottawa Convention; and
- (b) to do such other things within that area in connection with the carrying out of the mission’s functions as they are entitled to do by virtue of that Convention.

(4) Such an authorisation shall, in addition, have the effect of authorising any police officer to give such assistance as any member of the fact-finding mission may request for the purpose of facilitating the carrying out of the functions of the mission in accordance with the Ottawa Convention.

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

(6) The occupier of—

- (a) any premises in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or
- (b) any premises on which an 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 a member of the fact-finding mission.

(7) The validity of any authorisation purporting to be issued under this section in respect of any fact-finding mission shall not be called in question in any court of law at any time before the conclusion of the carrying out of the mission’s functions in the Territory.

(8) Accordingly, where an authorisation purports to be issued under this Section in respect of any fact-finding mission, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the carrying out of the mission’s functions in the Territory if those proceedings would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the mission’s functions.

(9) If in any proceedings any question arises whether a person at any time was, or was not, a member of any fact-finding mission, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(10) If an authorisation is issued under this Section, the Governor may issue an amendment varying the specified area, and—

- (a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;

- (b) subsections (7) and (8) shall apply to the amendment as they apply to the authorisation;
- (c) the Governor may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply.

Offences in Connection with Fact-Finding Missions

14.—(1) A person is guilty of an offence if—

- (a) he refuses without reasonable excuse to comply with any request made by a member of an authorised fact-finding mission or by a police officer assisting such a mission; and
- (b) that request is one made for the purpose of facilitating the carrying out by that mission of its functions under the Ottawa Convention.

(2) A person is guilty of an offence if he wilfully obstructs any member of an authorised fact-finding mission in the carrying out of the mission’s functions under the Ottawa Convention.

(3) A person guilty of an offence under this Section is liable—

- (a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;
- (b) on conviction, on indictment, to a fine.

(4) In this section “authorised fact-finding mission” means a fact-finding mission in respect of which an authorisation has been issued under section 13.

Privileges and Immunities for Fact-Finding Missions

15.—(1) Members of a fact-finding mission shall enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the carrying out of their functions under the Ottawa Convention;
- (b) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as, in accordance with the 1961 Articles, are accorded to a diplomatic agent; and
- (c) the like exemptions and privileges in respect of their personal baggage as, in accordance with Article 36 of the 1961 Articles, are accorded to a diplomatic agent.

(2) The immunities, privileges and exemptions accorded to members of fact-finding missions by virtue of subsection (1)(b) and (c) shall be enjoyed by them at any time when they are in the Territory either—

- (a) for the purpose of carrying out in the Territory any of the functions of the mission; or
- (b) while in transit to or from a country or territory in connection with the carrying out, in that country or territory, of any of the functions of the mission.

(3) If any of the immunities, privileges or exemptions accorded to a member of a fact-finding mission under this Section is waived in any particular case by the Secretary General of the United Nations, this section shall have effect in that case as if it did not confer that immunity, privilege or exemption on that member of the mission.

(4) If in any proceedings a question arises whether a person is or is not entitled to any immunity, privilege or exemption by virtue of this Section, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(5) In this section “the 1961 Articles” means the Articles which are set out in Schedule 1 to the Diplomatic Privileges Act 1964 (Articles of Vienna Convention on Diplomatic Relations of 1961 having force of law in the United Kingdom⁽⁴⁾).

(4) 1964 c. 81.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Reimbursement of Expenditure

16. The Governor may reimburse any person in respect of expenditure incurred in connection with the carrying out of the functions of a fact-finding mission.

INFORMATION AND RECORDS

Information and Records for Ottawa Convention Purposes

17.—(1) The Governor may, by notice served on any person, require him to give, in such form and within such reasonable period as is specified in the notice, such information as—

- (a) the Governor has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Ottawa Convention, and
- (b) is described in the notice;

and the information required by a notice may relate to a state of affairs subsisting before the coming into force of this Act or of the Ottawa Convention.

(2) The Governor may, by notice served on any person, require him to keep such records as—

- (a) the Governor has reasonable cause to believe will facilitate the giving of information which that person may at any time be required to give under subsection (1); and
- (b) are specified in the notice.

(3) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) or (2) is guilty of an offence and liable—

- (a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to a fine.

(4) A person on whom a notice is served under sub-section (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable—

- (a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Power to search and obtain evidence

18.—(1) If a justice of the peace is satisfied, on information on oath, that there are grounds for issuing a warrant under this subsection in relation to any premises, he may issue a warrant in writing authorising a person acting under the authority of the Governor 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) There are grounds for issuing a warrant under subsection (1) in relation to any premises if there are reasonable grounds for suspecting—

- (a) that an offence under this Act is being, has been or is about to be committed on the premises; or
- (b) that evidence of the commission of such an offence is to be found on the premises.

(3) A person who enters any premises under the authority of a warrant under this Section 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.

(4) A police officer who enters the premises—

(a) under the authority of the warrant, or

(b) by virtue of subsection (3)(a),

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

(5) No police officer shall, by virtue of subsection (4), search a person of the opposite sex.

(6) If a warrant under this Section so provides, a person (other than a police officer) who exercises the powers conferred by the warrant shall do so only in the presence of a police officer.

(7) A person is guilty of an offence if he wilfully obstructs another in the exercise of any power conferred by a warrant under this section.

(8) A person guilty of an offence under subsection (7) is liable—

(a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

Disclosure of information

19.—(1) This section applies to information if—

(a) it was obtained under, or in connection with anything done under, this Act or the Ottawa Convention; and

(b) it relates to a particular business or other activity carried on by any person.

(2) So long as the business or activity continues to be carried on the information shall not be disclosed except—

(a) with the consent of the person for the time being carrying on the business or activity;

(b) in connection with anything done for the purpose of the Ottawa Convention;

(c) in connection with anything done for the purposes of this Act;

(d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(e) in connection with the enforcement of any restriction on imports or exports; or

(f) with a view to ensuring the security of the United Kingdom or the Territory.

(3) A person who discloses information in contravention of this section is guilty of an offence and liable—

(a) on summary conviction, to a fine of an amount not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) A disclosure of any information to which this section applies may be made in circumstances in which any of paragraphs (b) to (f) of subsection (2) prevents there from being a contravention of this Section notwithstanding any obligation not to disclose it that would otherwise apply.

CRIMINAL PROCEEDINGS

Consents to Prosecutions

20. Proceedings for a section 2 offence shall not be instituted except by or with the consent of the Attorney General.

Forfeiture in Case of Conviction

21.—(1) The court by or before which a person is convicted of an offence under this Act 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.

(2) In particular, the court may order that the thing is to be dealt with as the Governor may see fit; and, in such a case, the powers of the Governor shall include power to direct the destruction of that thing or to secure its disposal in any other way that appears to him to be appropriate.

(3) 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 that person has been given an opportunity to show cause why the Order should not be made.

Offences by Bodies Corporate etc.

22.—(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.

SUPPLEMENTAL

Service of Notices

23. A notice under any provision of this Act, or a copy of a notice under any such provision, may be served on a person—

- (a) by delivering it to him in person;
- (b) by sending it by post to him at his usual or last-known residence or place of business in the Territory; or
- (c) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office.

General Interpretation

24.—(1) In this Act—

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“acquisition”, “disposal”, “transfer” and “participate”, and cognate expressions, shall be construed in accordance with section 2;

“anti-personnel mine”, “component”, “landmine” and “prohibited object” shall be construed in accordance with section 1;

“fact-finding mission” means a fact-finding mission under Article 8 of the Ottawa Convention;

“the Ottawa Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, which was signed by the United Kingdom at Ottawa on 3 December 1997;

“premises” includes land (including buildings), moveable structures, vehicles and aircraft;

“section 2 offence” means—

- (a) an offence under section 2; or
- (b) attempting or conspiring to commit an offence under that section, or incitement to commit such an offence;

and

“vehicle” includes a vessel or hovercraft.

(2) For the purpose of this Act—

- (a) an anti-personnel mine shall be taken to be destroyed if it is permanently prevented (by dismantling or any other means) from being capable of incapacitating, killing or injuring any person; and
- (b) a component of an anti-personnel mine shall be taken to be destroyed if it is permanently prevented from being used as part of an anti-personnel mine.

(3) The powers conferred by sections 7 to 10 are in addition to, and do not affect, any power exercisable in relation to an object otherwise than by virtue of those sections (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence).

Crown Application

25.—(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 supreme court of the Territory may, on the application of a person appearing to the court to have an interest, declare any conduct of the Crown constituting such a contravention to be unlawful.

(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; (which includes Her Majesty in right of Her Duchy of Lancaster and as Duke of Cornwall); and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity)(5) were contained in this Act.

SCHEDULE 2

Article 2

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

(5) 1947 c. 44.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn Island
St Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Island
Virgin Islands

SCHEDULE 3

Article 2

MODIFICATIONS TO THE ACT IN RESPECT OF THE BRITISH ANTARCTIC
TERRITORY AND THE BRITISH INDIAN OCEAN TERRITORY

1. The following sections shall not extend to the British Antarctic Territory and the British Indian Ocean Territory:

section 8(8)
section 10(10)
section 12(4)(a)
section 12(5)(a)
section 13(4)
section 13(5)
section 14(3)(a)
section 17(3)(a)
section 17(4)(a)
section 18(6)
section 18(8)(a)
section 19(3)(a)

2. In the application of sections 6(3)(a) and 14(1)(a) in the British Antarctic Territory and the British Indian Ocean Territory, the references therein to “a police officer” shall be omitted.

3. In the application of sections 18(4) and 18(5), the references therein to “police officer” shall be replaced by references to “person”.

4. In the application of the following sections in the British Antarctic Territory and the British Indian Ocean Territory, the references therein to “conviction on indictment” shall be replaced by references to “conviction by the supreme court of the Territory”;

section 2(8)
section 12(4)(b)

section 12(5)(b)
section 14(3)(b)
section 17(3)(b)
section 17(4)(b)
section 18(8)(b)
section 19(3)(b)

5. In the application of section 20 of the British Antarctic Territory and the British Indian Ocean Territory, the reference therein to “the Attorney General” shall be replaced by a reference to “the Principal Legal Adviser of the Territory”.

SCHEDULE 4

Article 2

MODIFICATIONS TO THE ACT IN RESPECT OF PITCAIRN ISLAND

1. In the application of the following sections in Pitcairn Island, the references therein to “summary conviction” shall be replaced by reference to “conviction by the subordinate court of the Territory”, and references to “conviction on indictment” shall be replaced by references to “conviction by the supreme court of the Territory”;

section 2(8)
section 12(4)
section 12(5)
section 14(3)
section 17(3)
section 17(4)
section 18(8)
section 19(3)

2. In the application of section 20 in Pitcairn Island, the reference herein to “the Attorney General” shall be replaced by a reference to “the Legal Adviser”.

3. In the application of the following sections in Pitcairn Island, the references therein to “a fine” shall be replaced by references to “a fine not exceeding £10,000 or its equivalent”;

section 12(4)(b)
section 12(5)(b)
section 14(3)(b)
section 17(3)(b)
section 17(4)(b)
section 18(8)(b)
section 19(3)(b)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 5

Article 2

MODIFICATIONS TO THE ACT IN RESPECT OF BERMUDA

In the application of the following sections in Bermuda, the references therein to “a fine not exceeding £5,000 or its equivalent” shall be replaced by references to “a fine not exceeding \$8,500”;

- section 12(4)(a)
- section 12(5)(a)
- section 14(3)(a)
- section 17(3)(a)
- section 17(4)(a)
- section 18(8)(a)
- section 19(3)(a)

SCHEDULE 6

MODIFICATIONS TO THE ACT IN RESPECT OF THE TURKS AND CAICOS ISLANDS

1. In the application of the following sections in the Turks and Caicos Islands, the references therein to “a fine not exceeding £5,000 or its equivalent” shall be replaced by references to “a fine not exceeding \$8,500”.

- section 12(4)(a)
- section 12(5)(a)
- section 14(3)(a)
- section 17(3)(a)
- section 17(4)(a)
- section 18(8)(a)
- section 19(3)(a)

2. In the application of the following sections in the Turks and Caicos Islands, the references therein to “a fine” shall be replaced by references to “a fine not exceeding \$50,000”;

- section 12(4)(b)
- section 12(5)(b)
- section 14(3)(b)
- section 17(3)(b)
- section 17(4)(b)
- section 18(8)(b)
- section 19(3)(b)

SCHEDULE 7

Article 2

MODIFICATIONS TO THE ACT IN RESPECT OF THE
SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

1. The following section shall not extend to the Sovereign Base Areas of Akrotiri and Dhekelia:
 - section 12(4)(a)
 - section 12(5)(a)
 - section 14(3)(a)
 - section 17(3)(a)
 - section 17(4)(a)
 - section 18(8)(a)
 - section 19(3)(a)
 2. In the application of the following sections in the Sovereign Base Areas of Akrotiri and Dhekelia, the references therein to “conviction on indictment” shall be replaced by references to “conviction by the Judge’s Court”:
 - section 12(4)(b)
 - section 12(5)(b)
 - section 14(3)(b)
 - section 17(3)(b)
 - section 17(4)(b)
 - section 18(8)(b)
 - section 19(3)(b)
 3. In the application of sections 8(2), 10(7) and 18(1) in the Sovereign Base Areas of Akrotiri and Dhekelia, the references therein to “a justice of the peace” shall be replaced by references to “a judge”.
 4. In the application of section 2(8) in the Sovereign Base Areas of Akrotiri and Dhekelia, the reference therein to “conviction on indictment” shall be replaced by a reference to “conviction on information”.
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Landmines Act 1998, extends provisions of the Act, with exceptions, adaptations and modifications, to the territories listed in Schedule 2.