Chemical Weapons (Prohibition)

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Chemical Weapons (Prohibition) Act 2007

TABLE OF AMENDMENTS

The Chemical Weapons (Prohibition) Act 2007 No 36 was assented to and commenced on 30 November 2007, as amended by:

Amending Legislation	Date of Assent	Date of Commencement
Customs Revenue and Border Protection Act 2012 No 5	20 June 2012	Sch 4: 1 August 2012

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An Act to give effect to the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and for related matters.

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by authority of the same, as follows:

Part 1
Introduction

1 Short title

This Act may be cited as the Chemical Weapons (Prohibition) Act 2007.

2 Interpretation

(1) In this Act, unless the context otherwise requires—

chemical weapon means the following, 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 subparagraph (a), which would be released as a result of the employment of such munitions and devices:

(c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)

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 13 January 1993 (a copy of extracts of the Treaty from the English text of which is deposited and held at the Ministry of Foreign Affairs and Immigration in the Cook Islands) 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 the Cook Islands from time to time

Cook Islander has the meaning given to it by section 2 of the Entry, Residence and Departure Act 1971–72

Cook Islands aircraft means an aircraft registered or required to be registered in the Cook Islands under the Civil Aviation Act 2002, or regulations or rules continued in force, deemed to be part of the law of the Cook Islands, or made, under that Act

Cook Islands vessel means a vessel registered or required to be registered in the Cook Islands under the Shipping Act 1998 or regulations or rules continued in force, or made, under that Act

discrete organic chemicals means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstracts Service registry number, if assigned

international inspector means an individual designated by the Technical Secretariat according to the procedures as set forth in Part 2, 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 of Foreign Affairs

National Authority means the National Authority established under this Act

national inspector means any person appointed under section 20(4)

Organisation means the Organisation for the Prohibition of Chemical Weapons established pursuant to Article 8 of the Convention

permanent resident of the Cook Islands has the meaning given to the term "permanent resident" by section 2 of the Entry, Residence and Departure Act 1971–72

precursor means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical, and includes any key component of a binary or multicomponent chemical system as defined in the Convention

purposes not prohibited under the convention means—

(a) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes; or

(b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(c) 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; or

(d) law enforcement including domestic riot control purposes

Schedule 1, 2 and 3 chemicals means the chemicals referred to in Schedule 1, 2 and 3 of the Convention

Secretary means the Secretary of Ministry of Foreign Affairs and Immigration

toxic chemical means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals, and includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere as defined in the Convention.

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

3 Application

(1) This Act extends to all Cook Islands territory, Cook Islands aircraft, and Cook Islands vessels.

(2) This Act also extends to all acts done or omitted to be done by Cook Islanders and permanent residents of the Cook Islands outside the Cook Islands.

(3) This Act binds the Crown.

4 Purpose

(1) This purpose of this Act is to implement the obligations of the Cook Islands under the Convention.

(2) Every person exercising a power or discretion conferred under this Act must have regard to the obligations of the Cook Islands under the Convention and the exercise of the power or discretion or the performance of any duty or function authorised by this Act must not be inconsistent with Cook Islands' obligations under the Convention.

[The next page is 780,801]

Part 2
Prohibitions and offences

5 Chemical weapons

(1) Every person commits an offence who—

(a) develops, produces, otherwise acquires, stockpiles or retains chemical weapons; or

(b) transfers, directly or indirectly, chemical weapons to any other person; or

(c) uses chemical weapons; or

(d) engages in any military preparations to use chemical weapons; or

(e) assists, encourages or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention; or

(f) uses a riot control agent as a method of warfare; or

(g) engages in any other activity prohibited to a State Party under the Convention,—

and is guilty of an offence and liable upon conviction to—

(h) in the case of an individual, imprisonment for a term not exceeding 10 years or to a fine not exceeding $1,000,000 or both;

(i) in the case of a body corporate, a fine not exceeding $1,000,000.

(2) Where an offence under subsection (1) which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he or she as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished in accordance with subsection (1).

(3) Any court which convicts a person under subsections (1)(a) and (b) may order that any chemical weapon that is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of this provision,—

(a) is forfeit to the Crown; and

(b) be seized without warrant by any officer of the Crown; and

(c) be stored pending disposal, and disposed of, in accordance with the provisions of the Convention.

6 Schedule 1 chemicals

Every person commits an offence who—

(a) produces, acquires, retains or uses any Schedule 1 chemical outside the territory of the Cook Islands unless such production, acquisition, retention or use takes place within the territory of another State Party; or

(b) produces, acquires, retains, transfers or uses Schedule 1 chemicals unless in accordance with a Schedule 1 chemicals licence granted under section 17; or

(c) transfers Schedule 1 chemicals outside the territory of the Cook Islands to a State not Party to the Convention; or

(d) transfers Schedule 1 chemicals to another State Party or imports Schedule 1 chemicals without notifying the National Authority not less than 60 days before the transfer—except that notification of the transfer

of saxitoxin shall be made not less than 24 hours before the time of transfer, if the transfer is for medical/diagnostic purposes and the quantity is 5 milligrams or less; or

(e) re-transfers to a third State Schedule 1 chemicals transferred to the Cook Islands.

and is liable on conviction to the penalties stated in section 5.

7 Schedule 2 chemicals

(1) Subject to subsection (2), every person who transfers to or receives from a State not Party to the Convention Schedule 2 chemicals, commits an offence and is liable on conviction to the penalties stated in section 5.

(2) Subsection (1) does not apply to those products containing Schedule 2 chemicals in which—

(a) the product contains 1% or less of a Schedule 2A or 2A chemical; or

(b) the product contains 10% or less of a Schedule 2B chemical; or

(c) the product is identified as a consumer good packaged for retail sale for personal use or packaged for individual use.

8 Schedule 3 chemicals

(1) Every person who transfers to a State not Party Schedule 3 chemicals, without first receiving an end-user certificate from the competent government authority of the State not Party commits an offence and is liable on conviction to the penalties stated in section 5.

(2) Subsection (1) does not apply to mixtures containing 30% or less of a Schedule 3 chemical.

(3) An end-user certificate must contain, at a minimum—

(a) statement that the Schedule 3 chemicals will only be used for purposes not prohibited under the Convention; and

(b) a statement that the Schedule 3 chemicals will not be re-transferred; and

(c) the types and quantities of the Schedule 3 chemicals to be transferred; and

(d) the end-use(s) of the Schedule 3 chemicals to be transferred; and

(e) the name(s) and address(es) of the Schedule 3 chemical end-user(s).

(4) With regard to subsection (3)(d) and (e), in the event that the Schedule 3 chemical transfer is to an importer in a State not Party to the Convention, and such importer is not the actual end-user, the importer is obliged to specify the name(s) and address(es) of the end-user(s) for the purposes of subsections (1) and (3).

9 Application of Customs Revenue and Border Protection Act 2012

All the provisions of the Customs Revenue and Border Protection Act 2012 that apply with respect to prohibited imports and prohibited exports (except the penalties under that Act) extend and apply with respect to chemicals whose importation or exportation is a prohibited transfer under this Act in all respects as if the importation or exportation of the goods were prohibited under the Customs Revenue and Border Protection Act 2012.

[Section 9 heading: amended, on 1 August 2012, by Schedule 4 of the Customs Revenue and Border Protection Act 2012 (2012 No 5).]

[Section 9: amended, on 1 August 2012, by Schedule 4 of the Customs Revenue and Border Protection Act 2012 (2012 No 5).]

10 Consent of Attorney-General required

(1) No proceedings in respect of any contravention of this Act occurring anywhere outside the Cook Islands may be instituted in any court except with the written consent of the Attorney-General, on such terms and conditions as the Attorney-General considers appropriate.

(2) Despite subsection (1), a person may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings may be taken without the Attorney-General's written consent.

11 Legal assistance

The offences set out in this Act are—

(a) offences to which the Mutual Assistance in Criminal Matters Act 2003 applies; and

(b) offences to which the Extradition Act 2003 applies; and

(c) offences in respect of which mutual legal assistance may be granted under any law relating to mutual assistance in criminal matters.

[The next page is 781,301]

Part 3
Administration, information, documents and licensing

12 Purpose of this Part

(1) The purpose of this Part is to ensure—

(a) that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited under the Convention; and

(b) that the National Authority has knowledge of dealings with chemicals that facilitates the making of the Cook Islands' periodic declarations under the Convention; and

(c) that the Cook Islands is otherwise able to fulfil its obligations under the Convention.

(2) Any power under this Part may be exercised only for that purpose.

13 National Authority

Establishment

(1) There is established for the purposes of this Act the National Authority for the implementation of the Convention.

(2) The Ministry of Foreign Affairs and Immigration is designated the National Authority for the purposes of this Act and the Convention.

(3) The Secretary shall exercise the functions and powers of the National Authority under this Act.

(4) The Secretary may delegate in writing to any person all or any of his or her powers, functions or duties under this Act other than this power of delegation.

Powers and functions of the National Authority

(5) The National Authority has the following powers and functions:

(a) to serve as the national focal point for effective liaison with the Organisation and other States Parties; and

(b) to co-ordinate activities of Ministries, agencies, other persons and industrial facilities for the purpose of implementing the Convention; and

(c) to supervise and monitor the enforcement of this Act through the regime established by this Act and the regulations issued thereto; and

(d) to gather the data to be reported in the initial and annual declarations to the Organisation and to report such data to the Organisation; and

(e) to supervise the implementation and enforcement of the Convention; and

(f) to provide the Organisation and other States Parties with relevant data and information in fulfilment of the obligations of the Cook Islands under the Convention; and

(g) to facilitate and cooperate with inspections under the Convention, including accompanying the Organisation's inspectors on international routine inspections and challenge inspections; and

(h) to approve facility agreements further to this Act; and

(i) to perform any other functions necessary to implement the Convention or this Act.

(6) The National Authority may appoint a specialised committee to advise it on any matter relating to this Act or the Convention, and may seek advice from any relevant government Ministry, agency or stakeholder or non-government organisation, agency or stakeholder concerning matters relating to this Act or the Convention.

14 Supply of information

Any person performing any activity to which any provision of Parts 6 to 9 of the Verification Annex of the Convention applies must make declarations in accordance with regulations made under this Act or in the absence of regulations provide a declaration that will, inter alia, require the person to—

(a) notify the chemicals and, as the case may be, the facility or plant site to the National Authority within 60 days after this section commences to apply to the chemicals or facility or plant site, by giving written notice in a form specified by the National Authority or by regulation, containing such information as is required by the form; and

(b) keep records in relation to the chemicals and facility or plant site, and the purpose to which the chemicals are put; and

(c) prepare, from those records, annual reports relating to the chemicals and the facility or plant site in a form specified by the National Authority or by regulation; and

(d) send the annual reports upon completion to the National Authority.

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

(2) Any person who refuses or fails to comply with subsection (1) commits an offence and is liable on conviction to the penalties stated in section 5.

15 National Authority may seek information

(1) This section applies if the National Authority considers that any person is capable of giving information that is relevant to—

(a) a declaration required to be given by the Cook Islands to the Organisation under the Convention; or

(b) the implementation of the Convention or enforcement of this Act.

(2) The National Authority may, by written notice given to a person, require the person to give such information to the National Authority,—

(a) if the person is a natural person, by writing signed by the person; or

(b) if the person is a body corporate, by writing signed by an officer authorised to sign on behalf of the body corporate,—

within such reasonable period and in such manner as is specified in the notice.

(3) The National Authority may, by written notice given to a person, require the person to give to the National Authority particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.

(4) Every person who 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 on conviction to the penalties stated in section 5.

(5) The power of the National Authority under this section to require a person to

give information or documents to the National Authority is in addition to any obligation to give information or documents that the person may have under section 14.

16 False or misleading statements or documents

Every person commits an offence who, in any document prepared pursuant to this Part, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the false or misleading document and is liable on conviction to the penalties stated in section 5.

17 Licensing

Schedule 1 chemicals

(1) No person may produce, acquire, retain, transfer or use Schedule 1 chemicals except under and in accordance with the conditions of a license granted by the National Authority pursuant to subsection (5).

Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals

(2) No person may—

(a) produce, process or consume more than 1 kilogram of a Schedule 2A chemical per year for a permitted purpose; or

(b) produce, process or consume more than 100 kilograms of any other Schedule 2A chemical per year for a permitted purpose; or

(c) subject to subsection (3), produce, process or consume more than 1 tonne of a Schedule 2B chemical per year for a permitted purpose; or

(d) subject to subsection (3), produce more than 30 tonnes of a Schedule 3 chemical per year for a permitted purpose; or

(e) subject to subsection (3) produce by synthesis more than 200 tonnes of unscheduled discrete organic chemicals or more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorous, sulfur or fluorine

except under and in accordance with the conditions of a license granted by the National Authority pursuant to subsection (5).

(3) A license is not required for the production, processing, consumption, import or export of the mixtures of chemicals containing 30% or less of a Schedule 2B chemical or the production import or export of the chemicals containing 30% or less of a Schedule 3 chemical or an unscheduled discrete organic chemical.

Imports and exports of Schedules 2 and 3 chemicals

(4) No person may import or export a Schedule 2 chemical or Schedule 3 chemical except under and in accordance with the conditions of a license granted by the National Authority pursuant to subsection (5) unless a license is not required in accordance with subsection (5).

Licenses

(5) An application for a license to do any of the acts referred to in subsections (1), (2), or (4) must be made to the National Authority in such manner or form as the National Authority may determine and must be accompanied by the prescribed fee.

(5A) The Minister may make regulations to prescribe the manner of application for a license; the form and duration of a license; the terms and conditions upon which and the circumstances in which a license may be granted, held, suspended, cancelled, extended, renewed or replaced; and the fees payable in respect thereof.

(6) Every person who contravenes this section commits an offence and is liable on conviction to the penalties stated in section 5.

(7) For the purpose of this section **permitted purpose** means—

(a) in the case of a Schedule 1 chemical, research, medical, pharmaceutical or protective purposes only; or

(b) in the case of any other toxic chemical or precursor—

(i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(iii) 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; or

(iv) law enforcement including domestic riot control purposes.

[The next page is 781,801]

Part 4
Inspections

18 Purpose of this Part

The purpose of this Part is to—

(a) facilitate inspections for a compliance purpose by national inspectors; and

(b) facilitate inspections by international inspectors by confirming the right of international inspectors to inspect facilities and other places in the Cook Islands in accordance with the Convention and any facility agreement between the Cook Islands and the Organisation, including by enabling Cook Islands officers—

(i) to secure access for any international inspector where consent cannot be obtained; and

(ii) to accompany or assist any international inspector.

19 Verification of toxic chemicals, their precursors and facilities producing by synthesis discrete organic chemicals

All toxic chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals, facilities related to such chemicals and other facilities and places as specified in the Verification Annex, are hereby declared to be subject to verification measures as provided in the Convention.

20 Inspections

(1) A reference in this section to a compliance purpose is a reference to 1 or more of the following purposes—

(a) determining whether the provisions of this Act and any regulations made thereunder have been or are being complied with at any premises; and

(b) determining whether the conditions applicable to a license have been or are being complied with by the holder of a license; and

(c) 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 the Cook Islands and the Organisation.

(2) A reference in this section to an inspection power is a reference to a power to do 1 or more of the following—

(a) search any premises:

(b) inspect or examine a matter or thing:

(c) take samples of a matter or thing:

(d) measure a matter or thing:

(e) examine a document, including a record kept in accordance with the requirements of this Act, any regulations made thereunder, or the conditions of a license:

(f) take extracts from, or make copies of, a document, including a record of a kind referred to in subparagraph (e):

(g) interview any person working on the premises, including making sound recordings of such interviews:

(h) have operated any equipment, including electronic equipment, located at the premises:

(i) operate any photographic or video-recording equipment anywhere in or around the premises provided safety regulations in force at the location permit doing so:

(j) do anything that is necessary or expedient for the carrying out of any of the acts referred to in subparagraphs (a) to (i), including restricting or prohibiting the access of persons and vehicles to or from the premises.

(3) A power referred to in subsection (2)(a), (b), (c), (d), or (i) may only be exercised in a manner that the facility operator believes, on reasonable grounds, to be in accordance with safety procedures applicable at the premises.

(4) National inspections and appointment of Cook Islands officials—

(a) the National Authority may, from time to time, appoint in writing any person to be authorised officers, who shall be national inspectors for the purposes of this Act and any regulations made thereunder.

(b) a national inspector may—

(i) with the consent of the person in control of any premises, or

(ii) under a warrant in respect of any premises,

enter the premises and exercise, on or in the premises, any inspection power for a compliance purpose.

(5) International inspections—

(a) an international inspector may—

(i) with the consent of the person in control of any premises—

(a) in respect of which any provision of Parts VI to IX of the Verification Annex to the Convention applies, or

(b) that is subject to an on-site challenge inspection referred to in Article IX(8) of the Convention, or

(c) in respect of which an investigation under Article X(9) of the Convention has been initiated, or

(ii) under a warrant issued in respect of the premises,

(b) do the following—

(i) enter the premises, and

(ii) inspect the premises pursuant to—

(a) 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

(b) in the case of any facility, any applicable facility agreement between the Cook Islands and the Organisation, and

(iii) exercise, in connection with any inspection, any function contemplated, and power provided for in—

(a) 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

(b) in the case of any facility, any applicable facility agreement between the Cook Islands and the Organisation.

21 Persons who may accompany international inspectors

(1) In order to facilitate inspections, an international inspector may be accompanied by—

(a) an observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention; and

(b) a national inspector; and

(c) any member of the Police.

(2) A national inspector may exercise any inspection power for the purposes of facilitating an inspection referred to in section 20(5).

(3) For the purposes of subsection (1)(a), **observer** means an observer referred to in Article IX(12) of the Convention, and includes any person authorised by the National Authority to observe the inspection.

22 Ministerial directions

(1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under this Act or the Convention.

(2) Every person commits an offence that fails to comply with any direction given under subsection (1) and is liable on conviction to the penalties stated in section 5.

23 Identification certificates

The National Authority shall issue a certificate to every international inspector and national inspector identifying him or her as such international inspector or national inspector, as the case may be.

24 Search warrants

Warrant for national inspection

(1) A national inspector may apply for a warrant where the consent of the person in control of any premises to enter the premises to exercise any inspection powers for a compliance purpose cannot be obtained or where the person refuses to give such consent.

(2) If the court is satisfied that there are reasonable grounds for believing that—

(a) entry to the premises is necessary to exercise any inspection power for a compliance purpose, and

(b) the consent of the person who is in control of the premises cannot be obtained or such consent is refused,

it may, unconditionally or subject to conditions, issue a warrant authorising the entry of the premises, at any time within 14 days of the issue of such warrant, or within such further time as may be specified in the warrant, by the national inspector.

Warrant for international inspection

(3) The National Authority must apply for a warrant on behalf of an international inspector or national inspector where the consent of the person in control of any premises to enter the premises for the purposes referred to in section 20(5)(b)(ii) or (iii) cannot be obtained or where the person refuses to give such consent.

(4) If the court is satisfied that there are reasonable grounds for believing that—

(a) the premises meets the conditions for entry described in section 20(5); and

(b) entry to the premises is necessary for the purposes referred to in section 20(5)(b)(ii) or (iii); and

(c) the consent of the person who is in control of the premises cannot be obtained in a timely manner for the international inspection to be carried out according to its timetable or such consent is refused,

it may issue, unconditionally or subject to conditions, a warrant authorising the entry of the premises, at any time within 14 days of the issue of the warrant (or within such further time as may be specified in the warrant) by the international inspector or national inspector.

25 Use of force

If force is required to enter and inspect any place specified in a warrant (whether by breaking down a door or otherwise), or in breaking open anything in the place, a member of the Police, or any other person appointed under section 20(4) of this Act may use such force as is reasonable in the circumstances.

26 Obligations of persons carrying out inspections

Every member of the Police or national inspector or other person appointed under section 20(4) who accompanies an international inspector on any inspection:

(a) must carry his or her identification certificate; and

(b) must 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 any time between the time of entry and the time the inspection concerned has been completed, must, 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 premises has been entered, and specifying the following matters—

(i) the time and date of entry; and

(ii) the circumstances and purpose of entry; and

(iii) the name of every person entering; and

(d) must have any warrant with him or her and produce it if required to do so; and

(e) where any thing is seized, must give an occupier or person in charge of the place a written inventory of all things so seized; and

(f) must report any offence or suspected offence to the Police as soon as practicable.

27 Obstruction of national or international inspectors

(1) Every person commits an offence, and is liable on conviction to the penalties stated in section 5, who obstructs, hinders, resists, or deceives any national inspector or international inspector who is exercising in the Cook Islands any function contemplated, or any power provided for, in this Act or in the Convention or in any applicable facility agreement.

(2) Nothing in this section applies to a refusal to give consent to entry by a national inspector who is not acting pursuant to a search warrant referred to in section 24.

(3) 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 referred to in section 24.

[The next page is 782,301]

Part 5
Miscellaneous

28 Privileges and immunities of members of OPCW inspection teams

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

(a) Article 29; and

(b) Article 30, paragraph 1; and

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

(d) Article 34.

(2) In addition to those privileges and immunities granted in paragraph (1), members of inspection teams and observers shall—

(a) have the right to use codes for their communications with the Technical Secretariat of the Organisation, in addition to the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 2 of Article 30 of the 1961 Articles; and

(b) be permitted to bring into the territory of the Cook Islands, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the importing or exporting of which is prohibited by law or controlled by quarantine regulations; and

(c) be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions in the Cook Islands.

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

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time—

(a) when they are in the Cook Islands—

(i) in connection with the carrying out of a routine inspection, a challenge inspection or an assistance inspection, or

(ii) while in transit to or from the territory of another State Party in connection with the carrying out of such an inspection there, or

(b) after an inspection under subsection (4)(a)(i), with respect to acts previously performed in the exercise of their official capacity.

(5) If—

(a) immunity from jurisdiction of a member of an inspection team is expressly waived in accordance with Part II(B)(14) of the Verification Annex to the Convention; and

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

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

(6) If in any proceedings any question arises whether a person is entitled or not to any privilege or immunity by virtue of this section, a certificate issued by or

under the Minister for Foreign Affairs and Immigration stating any fact relating to that question is conclusive evidence of that fact.

(7) Members of inspection teams and observers are hereby prohibited from engaging in any professional or commercial activity for personal profit in the Cook Islands.

29 Confidentiality

(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 the Cook Islands to fulfil its obligations under the Convention; or

(b) the enforcement of this Act; or

(c) dealing with an emergency involving public safety.

(3) Every person who fails to comply with this section commits an offence, and is liable on conviction to the penalties stated in section 5.

30 Self-incrimination

(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.

31 Primacy of Convention

Where there is any inconsistency between any other Cook Islands law and this Act or the Convention, this Act and the Convention prevail and where there is any inconsistency between a provision of this Act and the Convention, the Convention prevails.

32 Regulations

(1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations—

(a) providing for any matter that is necessary or desirable for the purpose of implementing the Convention, this Act or any agreement that is concluded between the Cook Islands 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 $5,000, that may, on 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.

(2) The Queen's Representative may from time to time, by Order in Executive Council,—

(a) amend the schedule to this Act by making such amendments to the text of the Convention set out in that schedule as are required to bring that text up to date:

(b) revoke the schedule to this Act, and substitute a new schedule setting out in an up-to-date form the text of the Convention set out in the schedule.

This Act is administered by the Ministry of Immigration and Foreign Affairs.
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