



– National Legislation – Implementation Kit for the Chemical Weapons Convention

“Initial measures”

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September 2012

Legal Notice

The provisions contained in this document are not meant as model provisions for inclusion in national drafts of legislation, but shall rather serve as illustration of how legal mechanisms on the national level can implement *initial requirements* of the Chemical Weapons Convention (CWC).

The Technical Secretariat reminds users that the text of the CWC and decisions adopted thereunder by the Policy-Making Organs of the OPCW are the only authentic legal reference. The provisions in this document do not constitute legal advice. The OPCW does not accept any liability with regard to the contents of this document.

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CHAPTER 1

Definitions

Article 1

“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).

Article 2

“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.

The definition in paragraph 1 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.

Toxic chemicals which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]

Article 3

“Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

Precursors which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]

Article 4

“Purposes not prohibited under the Convention” means—

- (a) Industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
- (b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (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; and
- (d) Law enforcement including domestic riot control purposes.

Article 5

“Riot control agent” means any chemical not listed in Schedule 1, 2 or 3, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.

Article 6

“Schedule 1, 2 and 3 chemicals” means those chemicals listed respectively in Schedule 1, Schedule 2 and Schedule 3 of the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]] regardless of whether the chemical is pure or contained in a mixture.

Article 7

The definitions shall be interpreted in light of the Convention, including its Annexes, and the decisions adopted thereunder. Such specifications can be laid down by regulations.

Terms and expressions used and not defined in this [Act, Statute, Ordinance, etc.] but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

CHAPTER 2
National Authority

Article 8

- (1) The [competent authority] shall by means of regulations designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation and other States Parties and for coordination of all national measures to be taken to fully and effectively implement the Convention.
- (2) In these regulations the [competent authority] shall direct or assign to the National Authority such powers and budget as may be necessary to coordinate the implementation and enforcement of the Convention, this law and its implementing regulations.
- (3) The [competent authority] may designate or establish further authorities to which it may assign specific duties with regard to the implementation of the Convention, this law and its implementing regulations.

CHAPTER 3
General Prohibitions

Article 9

- (1) It is prohibited to:
 - (a) develop, produce, otherwise acquire, stockpile or retain a chemical weapon;
 - (b) transfer, directly or indirectly, a chemical weapon to any other person;
 - (c) use a chemical weapon;
 - (d) engage in any military preparations to use a chemical weapon;
 - (e) assist, encourage or induce, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
 - (f) use a riot control agent as a method of warfare;
 - (g) engage in any other activity prohibited to a State Party under the Convention.

Article 10

- (1) If any chemical weapon, or old or abandoned chemical weapon is found in any place under the jurisdiction of [State Party], the weapon—
 - (a) is forfeited to the State; and
 - (b) may be seized without warrant by any [competent officer] of the State; and
 - (c) shall be stored pending disposal, and disposed of in a manner determined by [the competent authority] in accordance with the Convention.
- (2) Any chemical weapon discovered on the territory of [State Party] shall be reported to the Organisation by [competent authority] in accordance with the Convention.
- (3) Any chemical that is being used in the development or production of a chemical weapon may be seized by the State.

CHAPTER 4

Control regime for scheduled chemicals and discrete organic chemicals

SECTION 1: Schedule 1 chemicals

Article 11

- (1) The production, acquisition, retention, in-country-transfer, import, export and the use of Schedule 1 chemicals are prohibited unless on the territory of a State Party and the chemicals are exclusively applied to research, medical, pharmaceutical or protective purposes and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes. These activities are subject to prior and past declaration in accordance with regulations established under this [Act, Statute, Ordinance, etc.].
- (2) Retransfer of Schedule 1 chemicals to a third State is prohibited
- (3) If the prior declaration shows that the activity reported would conflict with the obligations of [State Party] under the Convention, the [competent authority] shall prohibit or limit the activity.

Article 12

The production of Schedule 1 chemicals is prohibited unless carried out for research, medical, pharmaceutical or protective purposes and in a facility licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

Article 13

The export and the import of Schedule 1 chemicals to or from a State not Party to the Convention, including transit through such State, are prohibited.

SECTION 2: Schedule 2 and 3 chemicals

Article 14

- (1) Without prejudice of the section above, the development, production, acquisition, retention, in-country-transfer, import, export and the use of toxic chemicals are prohibited unless it is for purposes not prohibited under the Convention.
- (2) Any person conducting one of the above activities shall make declarations in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]

Article 15

The export and the import of Schedule 2 chemicals to or from the territory of a State not party to the Convention, including transit through such State, are prohibited unless an exemption that is provided for in regulations is applicable; in case such an exemption is applicable, the export and the import shall be subject to declaration in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.].

Article 16

Except when exempted by regulations, the export of Schedule 3 chemicals to the territory of a State not Party is prohibited unless licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.]. The license may only be granted after it has been ensured that the transferred chemicals shall only be used for purposes not prohibited under the Convention. No license shall be granted without first having received an end-use certificate from the competent authorities of the recipient State.

Article 17

The export and the import of Schedule 2 and 3 chemicals to or from the territory of a State Party to the Convention shall be declared in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.].

CHAPTER 5

Basis for implementing regulations

Article 18

Following the entry into force of the present Act/180 days after the entry into force of the present act, for the purposes of further enforcing its provision and those of the Convention, [the competent authority], in cooperation with other relevant [Authorities] as needed, shall/is authorized to make regulations on:

- (a) Challenge inspections in accordance with the provisions under article IX and of the Convention and part II and X of its annex on implementation and verification;
- (b) Protection of Confidential information in accordance with the provisions of the annex on the protection of confidential information of the Convention

Article 19

Should the circumstances require, the [competent authority] shall make regulations establishing a declaration regime for all declarations to be made under the Convention and its Annexes, and establishing a licensing regime for all licenses to be granted accordingly, concerning notably but not limited to:

- (a) activities involving the production, processing or consumption of Schedule 1, 2 and 3 chemicals that is carried out, was carried out, or is anticipated to be carrying out in the future.
- (b) Other chemical production facilities, notably producing unscheduled discrete organic chemicals.

Article 20

When required under Article 19, the regulations establishing a licensing and a declaration regime shall ensure that the [competent authority] is enabled to

- (a) prevent prohibited activities and comply with the requirements of the Convention;
- (b) gather all information as required under Article VI of the Convention;
- (c) make all declarations to the Organisation under Article VI of the Convention in a comprehensive and timely manner.
- (d) ensure that International inspections can be carried out in any place under the jurisdiction of [State Party] when required by the Convention; and
- (e) ensure that all information and documents given to or obtained by any other person pursuant to the Convention, this law or its implementing

regulations is treated as confidential information, unless such information or document is publicly available.

CHAPTER 6

Penal provisions

SECTION 1: Chemical Weapons

Article 21

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) developing, producing, manufacturing, otherwise acquiring, possessing, stockpiling or retaining a chemical weapon;
- (b) transporting, transiting, trans-shipping or transferring directly or indirectly a chemical weapon to any other person;
- (c) using a chemical weapon;
- (d) engaging in any military preparations to use a chemical weapon
- (e) using riot control agents as a method of warfare ;
- (f) owning or possessing a chemical weapons production facility, constructing any new chemical weapons production facility or modifying any existing facility for the purpose of transforming it into a chemical weapons production facility.

SECTION 2: Scheduled Chemicals

Article 22

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical in the territory of a State not Party to the Convention;
- (b) illegally producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical;
- (c) exporting a Schedule 1 chemical previously imported into [State Party] to a third state;
- (d) illegally exporting to, or importing from, a State not party to the Convention, a Schedule 1, 2 or 3 chemical;

SECTION 3: failure to comply with implementing regulations of this law

Article 23

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) obstructing measures of verification or enforcement under the Convention [and/or] this law and its implementing regulations, except if the person that has not granted its consent to the carrying out of the international inspection unless a search warrant has been issued.
- (b) failing to comply with the licensing or the declaration regime or any other requirement to provide information established by this law and its implementing regulations;
- (c) failing to comply with the provision of this law and its implementing regulations to protect confidential information.

SECTION 4: Accessory offence, conspiracy and attempt

Article 24

Any person—

- (a) [level of intent] assisting, encouraging or inducing anyone to commit an offence under this [Act, Statute, Ordinance, etc.];
- (b) conspiring to commit an offence under this [Act, Statute, Ordinance, etc.]; or
- (c) attempting to commit an offence under this [Act, Statute, Ordinance, etc.]

shall be deemed to have committed the like offence.

CHAPTER 7

Extraterritorial application

Article 25

Any natural person who, in a place outside the jurisdiction of [State Party], commits an act or omission that would, if committed in a place under the jurisdiction of [State Party], constitute an offence under this [Act, Statute, Ordinance, etc.] is deemed to have committed it in a place under the jurisdiction of [State Party] if –

- (a) the person is a [State Party's] national; or
- (b) the place was under the control of [State Party].

CHAPTER 8
Final provisions

Article 26

Where there is any inconsistency between any other law and this [Act, Statute, Ordinance, etc.] or the Convention, this [Act, Statute, Ordinance, etc.] and the Convention shall prevail.

Article 27

Without prejudice to the provisions contained in this Act, the [competent authority], may take any additional steps deemed necessary with respect to the implementation of this law and the Convention, notably via the adoption of regulations.

Article 28

In case the Annex on Chemicals to the Convention is amended the Annex on Chemicals to this [Act, Statute, Ordinance, etc.] shall be adjusted and for this purpose be amendable by regulations.]

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