



Coroners and Justice Act 2009

2009 CHAPTER 25

PART 2

CRIMINAL OFFENCES

VALID FROM 01/02/2010

CHAPTER 1

MURDER, INFANTICIDE AND SUICIDE

VALID FROM 04/10/2010

Partial defence to murder: diminished responsibility

52 Persons suffering from diminished responsibility (England and Wales)

(1) In section 2 of the Homicide Act 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute—

“(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

- (a) arose from a recognised medical condition,
- (b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
- (c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

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- (a) to understand the nature of D's conduct;
- (b) to form a rational judgment;
- (c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.”

- (2) In section 6 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (evidence by prosecution of insanity or diminished responsibility), in paragraph (b) for “mind” substitute “ mental functioning ”.

VALID FROM 01/06/2011

53 Persons suffering from diminished responsibility (Northern Ireland)

- (1) Section 5 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (effect, in cases of homicide, of impaired mental responsibility) is amended as follows.

- (2) For subsection (1) substitute—

“(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

- (a) arose from a recognised mental condition,
- (b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
- (c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

- (a) to understand the nature of D's conduct;
- (b) to form a rational judgment;
- (c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.

(1C) Where, but for this section, D would be liable, whether as principal or as accessory, to be convicted of murder, D is liable instead to be convicted of manslaughter.”

- (3) In subsection (2), for “subsection (1)” substitute “ subsection (1C) ”.

- (4) In subsections (4) and (5), for “mental abnormality” substitute “ abnormality of mental functioning ”.

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VALID FROM 04/10/2010

Partial defence to murder: loss of control

54 Partial defence to murder: loss of control

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if—
 - (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
 - (b) the loss of self-control had a qualifying trigger, and
 - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.
- (3) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.
- (4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.
- (5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.
- (7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
- (8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

55 Meaning of “qualifying trigger”

- (1) This section applies for the purposes of section 54.
- (2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.
- (3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.
- (4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which—
 - (a) constituted circumstances of an extremely grave character, and

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(b) caused D to have a justifiable sense of being seriously wronged.

(5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

(6) In determining whether a loss of self-control had a qualifying trigger—

- (a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;
- (b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;
- (c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(7) In this section references to “D” and “V” are to be construed in accordance with section 54.

56 Abolition of common law defence of provocation

(1) The common law defence of provocation is abolished and replaced by sections 54 and 55.

(2) Accordingly, the following provisions cease to have effect—

- (a) section 3 of the Homicide Act 1957 (c. 11) (questions of provocation to be left to the jury);
- (b) section 7 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (questions of provocation to be left to the jury).

VALID FROM 04/10/2010

Infanticide

57 Infanticide (England and Wales)

(1) Section 1 of the Infanticide Act 1938 (c. 36) (offence of infanticide) is amended as follows.

(2) In subsection (1)—

- (a) for “notwithstanding that” substitute “ if ”, and
- (b) after “murder” insert “ or manslaughter ”.

(3) In subsection (2)—

- (a) for “notwithstanding that” substitute “ if ”, and
- (b) after “murder” insert “ or manslaughter ”.

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VALID FROM 01/06/2011

58 Infanticide (Northern Ireland)

- (1) Section 1 of the Infanticide Act (Northern Ireland) 1939 (c. 5) (offence of infanticide) is amended as follows.
- (2) In subsection (1)—
 - (a) for “notwithstanding that” substitute “ if ”, and
 - (b) after “murder” insert “ or manslaughter ”.
- (3) In subsection (2)—
 - (a) for “notwithstanding that” substitute “ if ”, and
 - (b) after “murder” insert “ or manslaughter ”.

Suicide

59 Encouraging or assisting suicide (England and Wales)

- (1) The Suicide Act 1961 (c. 60) is amended as follows.
- (2) In section 2 (criminal liability for complicity in another's suicide), for subsection (1) substitute—
 - “(1) A person (“D”) commits an offence if—
 - (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
 - (b) D's act was intended to encourage or assist suicide or an attempt at suicide.
 - (1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.
 - (1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.
 - (1C) An offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years.”
- (3) In subsection (2) of that section, for “it” to the end substitute “ of a person it is proved that the deceased person committed suicide, and the accused committed an offence under subsection (1) in relation to that suicide, the jury may find the accused guilty of the offence under subsection (1). ”
- (4) After that section insert—

“2A Acts capable of encouraging or assisting

- (1) If D arranges for a person (“D2”) to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of this Act as having done it.

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- (2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this Act it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).
- (3) A reference in this Act to a person (“P”) doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

2B Course of conduct

A reference in this Act to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.”

60 Encouraging or assisting suicide (Northern Ireland)

- (1) The Criminal Justice Act (Northern Ireland) 1966 (c. 20) is amended as follows.
- (2) In section 13 (criminal liability for complicity in another's suicide), for subsection (1) substitute—
 - “(1) A person (“D”) commits an offence if—
 - (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
 - (b) D's act was intended to encourage or assist suicide or an attempt at suicide.
 - (1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.
 - (1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.
 - (1C) An offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years.”
- (3) In subsection (2) of that section, for “it” to the end substitute “ of a person it is proved that the deceased person committed suicide, and the person charged committed an offence under subsection (1) in relation to that suicide, the jury may find the person charged guilty of the offence under subsection (1). ”
- (4) After that section insert—

“13A Acts capable of encouraging or assisting

- (1) If D arranges for a person (“D2”) to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of section 13 as having done it.
- (2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of section 13 and this section

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it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).

- (3) A reference in section 13 or this section to a person (“P”) doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

13B Course of conduct

A reference in section 13 or 13A to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.”

61 Encouraging or assisting suicide: information society services

Schedule 12 makes special provision in connection with the operation of section 2 of the Suicide Act 1961 (c. 60) and section 13 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) in relation to persons providing information society services within the meaning of that Schedule.

VALID FROM 06/04/2010

CHAPTER 2

IMAGES OF CHILDREN

Prohibited images

62 Possession of prohibited images of children

- (1) It is an offence for a person to be in possession of a prohibited image of a child.
- (2) A prohibited image is an image which—
 - (a) is pornographic,
 - (b) falls within subsection (6), and
 - (c) is grossly offensive, disgusting or otherwise of an obscene character.
- (3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—
 - (a) the image itself, and
 - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.
- (5) So, for example, where—

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- (a) an image forms an integral part of a narrative constituted by a series of images, and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,
- the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.
- (6) An image falls within this subsection if it—
 - (a) is an image which focuses solely or principally on a child's genitals or anal region, or
 - (b) portrays any of the acts mentioned in subsection (7).
 - (7) Those acts are—
 - (a) the performance by a person of an act of intercourse or oral sex with or in the presence of a child;
 - (b) an act of masturbation by, of, involving or in the presence of a child;
 - (c) an act which involves penetration of the vagina or anus of a child with a part of a person's body or with anything else;
 - (d) an act of penetration, in the presence of a child, of the vagina or anus of a person with a part of a person's body or with anything else;
 - (e) the performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
 - (f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child.
 - (8) For the purposes of subsection (7), penetration is a continuing act from entry to withdrawal.
 - (9) Proceedings for an offence under subsection (1) may not be instituted—
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

63 Exclusion of classified film etc

- (1) Section 62(1) does not apply to excluded images.
- (2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an “excluded image” if—
 - (a) it is contained in a recording of an extract from a classified work, and
 - (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.
- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to—

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- (a) the image itself, and
 - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;
- and section 62(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.
- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—
- (a) a defect caused for technical reasons or by inadvertence on the part of any person, or
 - (b) the inclusion in the recording of any extraneous material (such as advertisements),
- is to be disregarded.
- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 62 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.
- (7) In this section—
- “classified work” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);
 - “classification certificate” and “video work” have the same meaning as in the Video Recordings Act 1984 (c. 39);
 - “designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act;
 - “extract” includes an extract consisting of a single image;
 - “pornographic” has the same meaning as in section 62;
 - “recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).
- (8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

64 Defences

- (1) Where a person is charged with an offence under section 62(1), it is a defence for the person to prove any of the following matters—
- (a) that the person had a legitimate reason for being in possession of the image concerned;
 - (b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image of a child;
 - (c) that the person—
 - (i) was sent the image concerned without any prior request having been made by or on behalf of the person, and
 - (ii) did not keep it for an unreasonable time.
- (2) In this section “prohibited image” has the same meaning as in section 62.

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65 Meaning of “image” and “child”

- (1) The following apply for the purposes of sections 62 to 64.
- (2) “Image” includes—
 - (a) a moving or still image (produced by any means), or
 - (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).
- (3) “Image” does not include an indecent photograph, or indecent pseudo-photograph, of a child.
- (4) In subsection (3) “indecent photograph” and “indecent pseudo-photograph” are to be construed—
 - (a) in relation to England and Wales, in accordance with the Protection of Children Act 1978 (c. 37), and
 - (b) in relation to Northern Ireland, in accordance with the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)).
- (5) “Child”, subject to subsection (6), means a person under the age of 18.
- (6) Where an image shows a person the image is to be treated as an image of a child if—
 - (a) the impression conveyed by the image is that the person shown is a child, or
 - (b) the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not those of a child.
- (7) References to an image of a person include references to an image of an imaginary person.
- (8) References to an image of a child include references to an image of an imaginary child.

66 Penalties

- (1) This section has effect where a person is guilty of an offence under section 62(1).
- (2) The offender is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine, or both.
- (3) “The relevant period” means—
 - (a) in relation to England and Wales, 12 months;
 - (b) in relation to Northern Ireland, 6 months.

67 Entry, search, seizure and forfeiture

- (1) The following provisions of the Protection of Children Act 1978 (c. 37) apply in relation to prohibited images of children as they apply in relation to indecent photographs of children (within the meaning of that Act)—
 - (a) section 4 (entry, search and seizure);
 - (b) the Schedule (forfeiture of photographs).

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- (2) The following provisions of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) apply in relation to prohibited images of children as they apply in relation to indecent photographs of children (within the meaning of that Order)—
- (a) Article 4 (entry, search and seizure);
 - (b) the Schedule (forfeiture of photographs).
- (3) In this section “prohibited image of a child” means a prohibited image of a child to which section 62(1) applies.

68 Special rules relating to providers of information society services

Schedule 13 makes special provision in connection with the operation of section 62(1) in relation to persons providing information society services within the meaning of that Schedule.

Indecent pseudo-photographs of children

69 Indecent pseudo-photographs of children: marriage etc

- (1) In section 1A of the Protection of Children Act 1978 (c. 37) (making of indecent photograph of child etc: marriage and other relationships), after “photograph”, in each place it occurs, insert “ or pseudo-photograph ”.
- (2) In section 160A of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child etc: marriage and other relationships), after “photograph”, in each place it occurs, insert “ or pseudo-photograph ”.
- (3) In Article 15A of the Criminal Justice (Evidence, etc) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (marriage and other relationships), after “photograph”, in each place it occurs, insert “ or pseudo-photograph ”.
- (4) In Article 3B of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (marriage and other relationships), after “photograph”, in each place it occurs, insert “ or pseudo-photograph ”.

CHAPTER 3

OTHER OFFENCES

VALID FROM 06/04/2010

70 Genocide, crimes against humanity and war crimes

- (1) The International Criminal Court Act 2001 (c. 17) is amended as follows.
- (2) In sections 53 and 60 (trial and punishment of main offences), after subsection (6) add—

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“(7) Subsections (5) and (6) are subject to section 65B (restriction of penalties in relation to retrospective application of certain offences).”

(3) After section 65 insert—

“65A Retrospective application of certain offences

- (1) Sections 51 and 58 apply to acts committed on or after 1 January 1991.
- (2) But those sections do not apply to a crime against humanity, or a war crime within article 8.2(b) or (e), committed by a person before 1 September 2001 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law.
- (3) Section 52 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of England and Wales but for this section.
- (4) Section 59 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of Northern Ireland but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence—
 - (a) applies to conduct in which a person engaged on or after 1 January 1991, and
 - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (6) But sections 52 and 59, and any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence, do not apply to—
 - (a) conduct in which the person engaged before 1 September 2001, or
 - (b) conduct in which the person engaged on or after that date which was ancillary to an act or conduct which—
 - (i) was committed or engaged in before that date, and
 - (ii) would not constitute a relevant Part 5 offence, or fall within section 52(2) or 59(2), but for this section,
 unless, at the time the person engaged in the conduct, it amounted in the circumstances to a criminal offence under international law.
- (7) Section 65, so far as it has effect in relation to relevant Part 5 offences—
 - (a) applies to failures to exercise control of the kind mentioned in section 65(2) or (3) which occurred on or after 1 January 1991, and
 - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (8) But section 65, so far as it has effect in relation to relevant Part 5 offences, does not apply to a failure to exercise control of the kind mentioned in section 65(2) or (3) which occurred before 1 September 2001 unless, at the time the failure occurred, it amounted in the circumstances to a criminal offence under international law.

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- (9) In this section “relevant Part 5 offence” means an offence under section 51, 52, 58 or 59 or an offence ancillary to such an offence.

65B Modification of penalties: provision supplemental to section 65A

- (1) In the case of a pre-existing E&W offence committed before 1 September 2001, in section 53(6) “30 years” is to be read as “14 years”.
- (2) In the case of an offence of the kind mentioned in section 55(1)(d) which is ancillary to a pre-existing E&W offence committed before 1 September 2001, nothing in section 53(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act 1967.
- (3) In the case of a pre-existing NI offence committed before 1 September 2001, in section 60(6) “30 years” is to be read as “14 years”.
- (4) In the case of an offence of the kind mentioned in section 62(1)(d) which is ancillary to a pre-existing NI offence committed before 1 September 2001, nothing in section 60(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act (Northern Ireland) 1967.
- (5) In this section—
- “pre-existing E&W offence” means—
- (a) an offence under section 51 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;
 - (b) an offence under section 51 on account of an act constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Conventions);
 - (c) an offence of a kind mentioned in section 55(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above;
- “pre-existing NI offence” means—
- (a) an offence under section 58 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;
 - (b) an offence under section 58 on account of an act constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Conventions);
 - (c) an offence of a kind mentioned in section 62(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above.”

- (4) After section 67 insert—

“67A Supplemental provision about UK residents

- (1) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—
- (a) an individual who has indefinite leave to remain in the United Kingdom;

Status: Point in time view as at 12/01/2010. This version of this part contains provisions that are not valid for this point in time.

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- (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom;
 - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom;
 - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted;
 - (e) any other individual who has made an asylum claim or human rights claim (whether or not the claim has been determined) and who is in the United Kingdom;
 - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—
 - (i) the application or claim has been granted, or
 - (ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined);
 - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 or for practical reasons;
 - (h) an individual—
 - (i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,
 - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and
 - (iii) who is in the United Kingdom;
 - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999;
 - (j) an individual who is detained in lawful custody in the United Kingdom.
- (2) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—
- (a) the periods during which the individual has been or intends to be in the United Kingdom,
 - (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
 - (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
 - (d) whether the individual has an interest in residential property located in the United Kingdom.
- (3) In this section—
 “asylum claim” means—

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- (a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom, or
- (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom;

“Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998;

“detained in lawful custody” means—

- (a) detained in pursuance of a sentence of imprisonment, detention or custody for life or a detention and training order,
- (b) remanded in or committed to custody by an order of a court,
- (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984,
- (d) detained under Part 3 of the Mental Health Act 1983 or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968 (hospital orders, etc),
- (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995, or
- (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980;

“human rights claim” means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

“serious harm” has the meaning given by article 15 of Council Directive [2004/83/EC](#) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;

and a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.

- (4) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).”

Status: Point in time view as at 12/01/2010. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 06/04/2010

71 Slavery, servitude and forced or compulsory labour

- (1) A person (D) commits an offence if—
 - (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or
 - (b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.
- (4) In this section—

“Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

“the relevant period” means—

 - (a) in relation to England and Wales, 12 months;
 - (b) in relation to Northern Ireland, 6 months.

VALID FROM 01/02/2010

72 Conspiracy

- (1) In section 1A of the Criminal Law Act 1977 (c. 45) (conspiracy to commit offences outside the United Kingdom)—
 - (a) in the title and in subsection (2), for “the United Kingdom” substitute “England and Wales”, and
 - (b) for subsection (14) substitute—

“(14) Nothing in this section applies to an agreement entered into before 4 September 1998.
- (15) In relation to an agreement entered into during the period beginning with that date and ending with the commencement of section 72(1) of the Coroners and Justice Act 2009, this section applies as if in subsection (2) for “England and Wales” there were substituted “the United Kingdom”.

Status: Point in time view as at 12/01/2010. This version of this part contains provisions that are not valid for this point in time.

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(16) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.”

(2) In Article 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13)) (conspiracy to commit offences outside the United Kingdom)—

(a) in the title and in paragraph (2), for “the United Kingdom” substitute “Northern Ireland”, and

(b) for paragraph (14) substitute—

“(14) Nothing in this Article applies to an agreement entered into before 4 September 1998.

(15) In relation to an agreement entered into during the period beginning with that date and ending with the commencement of section 72(2) of the Coroners and Justice Act 2009, this Article applies as if in paragraph (2) for “Northern Ireland” there were substituted “the United Kingdom”.

(16) Nothing in this Article imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.”

73 Abolition of common law libel offences etc

The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished—

- (a) the offences of sedition and seditious libel;
- (b) the offence of defamatory libel;
- (c) the offence of obscene libel.

Status:

Point in time view as at 12/01/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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