

## **FRAUD ACT 2006**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 1: Fraud***

8. **Section 1** creates a new general offence of fraud and introduces the three possible ways of committing it. The three ways are set out in sections 2, 3 and 4 and explained below.
9. **Subsection (3)** sets out the penalties for the offence. The maximum custodial sentence of 10 years is the same as for the main existing deception offences and for the common law crime of conspiracy to defraud.

##### ***Section 2: Fraud by false representation***

10. **Section 2** makes it an offence to commit fraud by false representation. **Subsection (1)(a)** makes clear that the representation must be made dishonestly. This test applies also to sections 3 and 4. The current definition of dishonesty was established in *R v Ghosh* [1982] Q.B.1053. That judgment sets a two-stage test. The first question is whether a defendant's behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people. If answered positively, the second question is whether the defendant was aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people.
11. **Subsection (1)(b)** requires that the person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place. The same requirement applies to conduct criminalised by sections 3 and 4.
12. **Subsection (2)** defines the meaning of "false" in this context and **subsection (3)** defines the meaning of "representation". A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading.
13. **Subsection (3)** provides that a representation means any representation as to fact or law, including a representation as to a person's state of mind.
14. **Subsection (4)** provides that a representation may be express or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed. So it could be written or spoken or posted on a website.
15. A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation.
16. This offence would also be committed by someone who engages in "phishing": i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the

reader to provide information such as credit card and bank account numbers so that the “phisher” can gain access to others’ assets.

17. *Subsection (5)* provides that a representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. (An example is where a person enters a number into a “CHIP and PIN” machine.) The Law Commission had concluded that, although it was not clear whether a representation could be made to a machine, such a provision was unnecessary (see paragraph 8.4 of their report). But subsection (5) is expressed in fairly general terms because it would be artificial to distinguish situations involving modern technology, where it is doubtful whether there has been a “representation”, because the only recipient of the false statement is a machine or a piece of software, from other situations not involving modern technology where a false statement is submitted to a system for dealing with communications but is not in fact communicated to a human being (e.g., postal or messenger systems).

### ***Section 3: Fraud by failing to disclose information***

18. **Section 3** makes it an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts. The concept of “legal duty” is explained in the Law Commission’s Report on *Fraud*, which said at paragraphs 7.28 and 7.29:

“7.28 ... Such a duty may derive from statute (such as the provisions governing company prospectuses), from the fact that the transaction in question is one of the utmost good faith (such as a contract of insurance), from the express or implied terms of a contract, from the custom of a particular trade or market, or from the existence of a fiduciary relationship between the parties (such as that of agent and principal).

- 7.29. For this purpose there is a legal duty to disclose information not only if the defendant’s failure to disclose it gives the victim a cause of action for damages, but also if the law gives the victim a right to set aside any change in his or her legal position to which he or she may consent as a result of the non-disclosure. For example, a person in a fiduciary position has a duty to disclose material information when entering into a contract with his or her beneficiary, in the sense that a failure to make such disclosure will entitle the beneficiary to rescind the contract and to reclaim any property transferred under it.”
19. For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section. Similarly, an offence could be committed under this section if a person intentionally failed to disclose information relating to his heart condition when making an application for life insurance.

### ***Section 4: Fraud by abuse of position***

20. **Section 4** makes it an offence to commit a fraud by dishonestly abusing one’s position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another’s financial interests or not act against those interests. The Law Commission explain the meaning of “position” at paragraph 7.38:

“7.38 The necessary relationship will be present between trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm’s length. In nearly all cases where

it arises, it will be recognised by the civil law as importing fiduciary duties, and any relationship that is so recognised will suffice. We see no reason, however, why the existence of such duties should be essential. This does not of course mean that it would be entirely a matter for the fact-finders whether the necessary relationship exists. The question whether the particular facts alleged can properly be described as giving rise to that relationship will be an issue capable of being ruled upon by the judge and, if the case goes to the jury, of being the subject of directions.

21. The term “abuse” is not limited by a definition, because it is intended to cover a wide range of conduct. Moreover *subsection (2)* makes clear that the offence can be committed by omission as well as by positive action. For example, an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead at the expense of the employer, commits an offence under this section.
22. An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this section.
23. Another example covered by this section is where a person who is employed to care for an elderly or disabled person has access to that person’s bank account and abuses his position by transferring funds to invest in a high-risk business venture of his own.

#### ***Section 5: “Gain” and “loss”***

24. **Section 5** defines the meaning of “gain” and “loss” for the purposes of sections 2 to 4. The definitions are essentially the same as those in section 34(2)(a) of the Theft Act 1968 and section 32(2)(b) of the Theft Act (Northern Ireland) 1969. Under these definitions, “gain” and “loss” are limited to gain and loss in money or other property. The definition of “property” which applies in this context is based on section 4(1) of the Theft Act 1968 (read with section 34(1) of that Act) and section 4(1) of the Theft Act (Northern Ireland) 1969 (read with section 32(1) of that Act). The definition of “property” covers all forms of property, including intellectual property, although in practice intellectual property is rarely “gained” or “lost”.

#### ***Section 6: Possession etc. of articles for use in frauds***

25. **Section 6** makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 and section 24 of the Theft Act (Northern Ireland) 1969. (These provisions make it an offence for a person to “go equipped” to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode.) The intention is to attract the case law on section 25, which has established that proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice. In *R v Ellames* 60 Cr. App. R. 7 (CA), the court said that:

“In our view, to establish an offence under s 25(1) the prosecution must prove that the defendant was in possession of the article, and intended the article to be used in the course of or in connection with some future burglary, theft or cheat. But it is not necessary to prove that he intended it to be used in the course of or in connection with any specific burglary, theft or cheat; it is enough to prove a general intention to use it for some burglary, theft or cheat; we think that this view is supported by the use of the word ‘any’ in s 25(1). Nor, in our view, is it necessary to prove that the defendant intended to use it himself; it will be enough to prove that he had it with him with the intention that it should be used by someone else.

26. *Subsection (2)* provides that the maximum custodial sentence for this new offence is 5 years.

### ***Section 7: Making or supplying articles for use in frauds***

27. **Section 7** makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit or facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction. The actual amount of electricity used is concealed from the provider, who thus makes a loss. *Subsection (2)* provides that the maximum custodial sentence for this offence is 10 years.

### ***Section 8: “Article”***

28. **Section 8** extends the meaning of “article” for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples’ credit card details or draft letters in connection with ‘advance fee’ frauds.

### ***Section 9: Participating in fraudulent business carried on by sole trader etc.***

29. **Section 9** makes it an offence for a person knowingly to be a party to the carrying on of fraudulent business where the business is not carried on by a company or (broadly speaking) a corporate body. This new offence parallels the existing offence that applies in the case of fraudulent businesses carried on by companies and certain other corporate bodies. The existing offence is contained in section 458 of the Companies Act 1985 (for England and Wales and Scotland) or (for Northern Ireland) in Article 451 of the Companies (Northern Ireland) Order 1986. The extension of this criminal liability under the companies legislation to non-corporate traders was recommended by the Law Commission in their Report on *Multiple Offending* (Law Com No. 277, Cm 5609, 2002). Non-corporate traders covered by the new offence include sole traders, partnerships, trusts, companies registered overseas, etc.
30. A person commits the offence of fraudulent trading under the companies legislation if he is knowingly party to the carrying on of a company’s business either with intent to defraud creditors or for any other fraudulent purposes. This section creates a similar offence that applies to persons knowingly party to the carrying on of non-corporate businesses in either of those ways. Fraudulent trading is in effect a general fraud offence, comparable to conspiracy to defraud, but requiring the use of a company instead of the element of conspiracy. The case law has established that:
- dishonesty is an essential ingredient of the offence;
  - the mischief aimed at is fraudulent trading generally, and not just in so far as it affects creditors;
  - the offence is aimed at carrying on a business but can be constituted by a single transaction; and
  - it can be committed only by persons who exercise some kind of controlling or managerial function within the company.

It is intended that these principles should apply to the new offence in section 9 too.

31. **Section 9** refers to the case where a business is carried on by a person who is “outside the reach of” section 458 of the Companies Act 1985 or Article 451 of the Companies (Northern Ireland) Order 1986. This is done because although the basic application of section 458 and Article 451 is to “companies” (as defined for the purposes of that legislation), the offence is applied by other legislative provisions to other corporate bodies that are not companies. (Section 718 of the Companies Act 1985 and Article 667 of the Companies (Northern Ireland) Order 1986 are relevant here. There are also

*These notes refer to the Fraud Act 2006 (c.35)  
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regulations that apply these offences to limited liability partnerships and European Economic Interest Groupings.) Moreover, the new offence does not apply in relation to corporate bodies whose businesses could be subject to section 458 or Article 451, but who have been exempted from the application of that section or that Article (see *subsection (3)(c)* and *(4)(c)*).

32. The maximum custodial sentence for this new offence is 10 years.

***Section 10: Participating in fraudulent business carried on by company etc.: penalty***

33. **Section 10** increases the maximum custodial sentence for fraudulent trading under the companies legislation to 10 years. The Company Law Review, at paragraph 15.7 of its *Final Report: Modern Company Law for a Competitive Economy* (2001) recommended that the maximum penalty for the fraudulent trading offence in the 1985 Act be aligned with other offences of dishonesty in the Theft Act 1968 (i.e. 10 years). The offence in section 458 of the Companies Act 1985 applies in Scotland as well as in England and Wales and by virtue of clause 15(4) the amendment made by *subsection (1)* extends to Scotland too. *Subsection (2)* increases the maximum custodial sentence for the offence in Article 451 of the Companies (Northern Ireland) Order 1986 to 10 years.

***Section 11: Obtaining services dishonestly***

34. **Section 11** makes it an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be. It is not possible to commit the offence by omission alone and it can be committed only where the dishonest act was done with the intent not to pay for the services as expected. This offence replaces the offence of obtaining services by deception in section 1 of the Theft Act 1978 and Article 3 of the Theft (Northern Ireland) Order 1978, though the new offence contains no deception element. Under *subsection (3)* the maximum custodial sentence for this offence is 5 years.
35. The offence is not inchoate: it requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or other false personal information to obtain the service would be committing an offence under this clause. The section would also cover a situation where a person climbs over a wall and watches a football match without paying the entrance fee – such a person is not deceiving the provider of the service directly, but is obtaining a service which is provided on the basis that people will pay for it.
36. **Section 11** also covers the situation where a person attaches a decoder to her television to enable viewing access to cable / satellite television channels for which she has no intention of paying.

***Section 12: Liability of company officers for offences by company***

37. This section repeats the effect of section 18 of the Theft Act 1968. It provides that if persons who have a specified corporate role are party to the commission of an offence under the Act by their body corporate, they will be liable to be charged for the offence as well as the corporation. By virtue of *subsection (2)(a) and (b)* this offence applies to directors, managers, secretaries and other similar officers of companies and other bodies corporate. *Subsection (3)* provides that if the body corporate charged with an offence is managed by its members the members involved in management can be prosecuted too.

***Section 13: Evidence***

38. This section is similar to section 31(1) of the Theft Act 1968 and section 29(1) of the Theft Act (Northern Ireland) 1969. Under this section a person is protected from

incriminating himself or his spouse or civil partner for the purposes of offences under the Act and related offences, while nonetheless being obliged to co-operate with certain civil proceedings relating to property. The section goes beyond section 31(1) of the Theft Act and section 29(1) of the Theft Act (Northern Ireland) in removing privilege in relation to ‘related offences’. “Related offence” is defined in *subsection (4)* as meaning conspiracy to defraud and any other offence involving any form or fraudulent conduct or purpose.

39. The Act does not include an equivalent to section 30 of the Theft Act 1968. Section 30 was a positive statement, which went with the repeal of sections 12 and 16 of the Married Women’s Property Act 1882. It was aimed at ensuring that a pre-1882 common law rule that husbands and wives could not steal from each other would not be resurrected. It is no longer necessary to include a provision of this sort, as it seems highly unlikely that this rule would be resurrected.

### ***Schedule 1: Minor and Consequential Amendments***

#### **Abolition of various deception offences**

Paragraph 1 removes the deception offences which are replaced by the new offences in the Act.

#### **Visiting Forces Act 1952**

Paragraph 2 amends the Schedule to the 1952 Act which defines “offence against property” for the purposes of section 3 of that Act, which restricts the trial by UK courts of offenders connected with visiting forces. It inserts a reference to the Fraud Act 2006, so that all the offences in this Act will be regarded as offences against property, meaning they cannot in most circumstances be charged against visiting forces.

#### **Theft Act 1968**

Paragraph 3 omits section 15B, which is no longer needed, as it is mainly supplementary to 15A which is being repealed by paragraph 1.

Paragraph 4 removes the references in section 18(1) of the 1968 Act (liability of company officers) to sections 15 and 16, which are repealed by paragraph 1. As explained above, the effect of section 18 is reproduced for all the new offences in this Act by section 12.

Paragraph 5 removes the reference in section 20(3) of the 1968 Act (which defines “deception” for the purposes of the offence - in subsection (2) - of procuring a valuable security by deception) to section 15, which is repealed by the Act. Section 20(2) of the 1968 Act is repealed by paragraph 1, so there is no need for any replacement provision.

Paragraph 6 makes two amendments of section 24 of the 1968 Act (scope of offences relating to stolen goods).

- It replaces the reference in section 24(4) to section 15 with a reference to fraud within the meaning of the Act.
- It adds a new subsection (5) to section 24 which provides that, in section 24(1), the reference to the commencement of the 1968 Act shall be read as a reference to the commencement of the Fraud Act 2006 and the reference to offences under section 15 shall be read as a reference to the general fraud offence in section 1 of this Act.

Paragraph 7 makes three amendments of section 24A of the 1968 Act (on dishonestly retaining a wrongful credit, which was inserted by the 1996 Act as a result of *R v Preddy* [1996] AC 815).

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- It deletes the existing subsections (3) and (4), which deal with the meaning of “wrongful”, and replaces them with a new subsection (2A). The effect is that the existing references to offences under section 15A are replaced by a reference to the general fraud offence in section 1 of the Act.
- The second change is consequential on the above - it renumbers as (2A) the existing reference to subsection (4) in subsection (7).
- It replaces the existing subsection (9), which says that “account” and “money” shall be construed in accordance with 15B. Although section 15B is repealed in paragraph 3, the substance of subsections (3) to (5) needs to be preserved for the sake of section 24A. This paragraph does this by inserting them as subsections (9) to (11) of section 24A, which is now their more natural home. (But the reference to the euro is dropped - - - it is no longer needed now that the euro is a currency.) It also expands the definition of “account” to include accounts kept with issuers of electronic money.

Paragraph 8 amends section 25 (going equipped). Section 25 will be replaced as far as its application to fraud is concerned by sections 6 to 8 of the Act. Therefore, section 25 needs modifying so that the references to “cheats” in subsection (1), (3) and (5) are removed because the term “cheat” is defined by reference to section 15 of the 1968 Act.

### **Theft Act (Northern Ireland) 1969**

Paragraph 9 makes provision for Northern Ireland equivalent to paragraph 3 of Schedule 1 to the Act.

Paragraph 10 makes provision for Northern Ireland equivalent to paragraph 5 of Schedule 1 to the Act.

Paragraph 11 makes provision for Northern Ireland equivalent to paragraph 6 of Schedule 1 to the Act.

Paragraph 12 makes provision for Northern Ireland equivalent to paragraph 7 of Schedule 1 to the Act.

Paragraph 13 makes provision for Northern Ireland equivalent to paragraph 8 of Schedule 1 to the Act.

### **Theft Act 1978**

Paragraph 14 repeals section 4(2)(a), which specifies the penalties for offences under sections 1 and 2 of the Act, which are both repealed by paragraph 1.

Paragraph 15 repeals section 5(1), which defines “deception” for the purposes of sections 1 and 2 and will likewise be redundant on their repeal.

### **Theft (Northern Ireland) Order 1978**

Paragraphs 16 and 17 of Schedule 1 make provision for Northern Ireland equivalent to the provision made for England and Wales by paragraphs 14 and 15.

### **Limitation Act 1980**

Paragraph 18 amends section 4 (special time limit on civil actions in cases of theft). It replaces the existing section 4(5)(b), which defines “theft” as including cases of fraud under section 15 of the 1968 Act and blackmail under section 21 of the 1968 Act, with a new provision which refers to fraud (within the meaning of the Act). It preserves the reference to blackmail.

## **Finance Act 1982**

Paragraph 19 amends section 11, which enables the Commissioners of Customs and Excise to institute proceedings under the Theft Act 1968, the Theft Act 1978 etc, notwithstanding the fact that payments may be due to the Intervention Board for Agricultural Produce. The amendment adds the Fraud Act 2006 to the list of Acts in respect of which proceedings may be taken.

## **Nuclear Material (Offences) Act 1983**

Paragraph 20 amends section 1, which provides that if a person commits a wide range of offences (including “fraud”) “in relation to or by means of” nuclear material, he may be tried in the UK irrespective of where he did the acts. The amendment simply deletes the reference to section 15 of the 1968 Act and section 15 of the Theft Act (Northern Ireland) 1969, which are repealed by the Act. As “fraud” is already mentioned in section 1 in a general way, the 1983 Act provision will bite on the offence in section 1 of the Act without the need for a specific mention of the Act.

## **Police and Criminal Evidence Act 1984**

Paragraph 21 amends section 1(8) (on stop and search) by replacing the existing reference to section 15 of the 1968 Act with a reference to fraud contrary to section 1. The effect is that articles made or adapted for use in frauds will be “prohibited articles” and a constable may search vehicles for them under section 1(2) or seize them under section 1(6). (This does not obviate the need for section 6 of the Act as the possession of “prohibited articles” is not an offence under PACE.)

## **Limitation (Northern Ireland) Order 1989**

Paragraph 22 makes provision for Northern Ireland equivalent to the provision made for England and Wales by paragraph 18.

## **Police and Criminal Evidence (Northern Ireland) Order 1989**

Paragraph 23 makes provision for Northern Ireland equivalent to the provision made for England and Wales by paragraph 21.

## **Criminal Justice Act 1993**

Paragraph 24 makes three amendments to the definitions of Group A and Group B offences for the purposes of the jurisdictional provisions of Part 1 of the 1993 Act. The basic effect of these 1993 provisions is to give our courts jurisdiction over certain specific crimes of dishonesty even where only one element of the offence took place in the UK. So paragraph 24:

- deletes the references in section 1(2)(a) to sections 15, 15A, 16 and 20(2) of the 1968 Act, which are redundant as they are repealed by the Act,
- deletes section 1(2)(b) which comprises references to sections 1 and 2 of the 1978 Act, which are repealed by the Act, and
- adds to section 1(2) a new paragraph (bb) with references to the offences in sections 1, 6, 7, 9 and 11 of the Act.

Paragraph 25 amends section 2 of the 1993 Act to ensure that the offence of fraud in section 1 of the Act can be prosecuted if the only event that takes place in this jurisdiction is the gain or loss of property.



### **Criminal Justice (Northern Ireland) Order 1994**

Paragraph 26 makes provision for Northern Ireland equivalent to the provision made for England and Wales by paragraph 27.

### **Criminal Justice (Northern Ireland) Order 1996**

Paragraph 27 makes provision for Northern Ireland equivalent to the provision made for England and Wales by paragraph 24.

Paragraph 28 makes provision for Northern Ireland equivalent to the provision made for England and Wales by paragraph 25.

### **Powers of Criminal Courts (Sentencing) Act 2000**

Paragraph 29 amends section 130 (on compensation orders). Section 130 contains references in subsections (5) and (6)(a) to an offence under the Theft Act 1968. This paragraph inserts a new reference to offences under the Act. This is consequential on the repeal and replacement of sections 15, 15A, 15B, 16 and 20 (2) of the 1968 Act by the Act.

### **Terrorism Act 2000**

Paragraph 30 amends Schedule 9 (scheduled offences) to reflect the repeal of the section 15 of the Theft Act (Northern Ireland) 1969 (offence of “obtaining property by deception”) and the creation of the new offences under section 1 of the Act.

Paragraph 31 amends Schedule 12 to reflect the repeal of section 15 of the Theft Act (Northern Ireland) 1969 and the consequent need to include an express definition of deception.

### **Criminal Justice and Court Services Act 2000**

Paragraph 32 makes two amendments to Schedule 6, which defines “trigger offences” for the purposes of Part 3 of the 2000 Act. The term is used in sections 63 and 64 (in both cases commission of a trigger offence can lead to drug testing of young offenders on supervision or licence after release). So paragraph 30:

- removes the reference to section 15, which will be redundant on its repeal, and
- inserts a new paragraph 3 saying that offences under sections 1, 6 and 7 of the Act are trigger offences.

### **Armed Forces Act 2001**

Paragraph 33 amends section 2 which gives similar powers of stop and search to service policemen as are given to regular policemen by PACE. It replaces the existing reference to section 15 of the 1968 Act with a reference to section 1 of the Act. It parallels the amendment to PACE made by paragraph 21.

### **Licensing Act 2003**

Paragraph 34 adds a reference to offences under the Act to the list of “relevant offences” for the purposes of the personal licence provisions of the 2003 Act.

### **Asylum and Immigration (Treatment of Claimants, etc) Act 2004**

Paragraph 35 amends the list of offences, in section 14(2) of the 2004 Act, for which an Immigration Officer may arrest without warrant when exercising a function under the Immigration Acts. Sub-paragraph (1) deletes the existing references to offences repealed by the Act. Sub-paragraph (2) inserts a reference to provisions of the Act broadly equivalent to those which are currently mentioned in section 14.

## **Serious Organised Crime and Police Act 2005**

Paragraph 36 amends section 76 of the Serious Organised Crime and Police Act 2005 which concerns financial reporting orders. That section provides for a new ancillary order, available to courts at the point of sentence that will require offenders convicted of specified fraud and organised crime lifestyle offences to make such reports of their income and assets as the court sets out in the order. Paragraph 34 ensures that the offences in sections 1 and 11 of the Act can trigger the making of a financial reporting order and deletes the references in section 76 of the 2005 Act to the deception offences in sections 15, 15A, 16 and 20(2) of the Theft Act 1968 and sections 1 and 2 of the Theft Act 1978 that are repealed by the Act.

Paragraph 37 makes similar changes to section 78 of the 2005 Act which concerns financial reporting orders in Northern Ireland.

## **Gambling Act 2005**

Paragraph 38 adds a reference to offences under the Act to the list of “relevant offences” for the purposes of the Gambling Act. Under the Gambling Act a conviction for a relevant offence is a ground on which a licence under that Act may be refused.

## ***Schedule 2: Transitional Provisions and Savings***

### **Maximum term of imprisonment for offences under this Act**

Paragraph 1 is a transitional provision to ensure the lower maximum penalty for summary cases applies in any case involving an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.

### **Increase in penalty for fraudulent trading**

Paragraph 2 preserves the existing (lower) penalty for cases of fraudulent trading under the companies legislation in which the events occurred before the commencement of this Act. Section 16(1)(d) of the Interpretation Act provides that “...where an Act repeals an enactment, the repeal does not, unless the contrary intention appears - ....(d) affect any penalty.... or punishment committed against that enactment...”. This does not preserve a penalty for an offence when there is merely a change in the penalty (and no repeal of the existing offence).

### **Abolition of deception offences**

Paragraph 3 makes transitional provision in relation to offences partly committed before this Act comes into force. Offences committed wholly before this Act comes into force will be covered by section 16 of the Interpretation Act.

### **Scope of offences relating to stolen goods under the [Theft Act 1968 \(c.60\)](#)**

Paragraph 4 ensures that this Act will not affect the operation of section 24 of the 1968 Act in relation to goods obtained before its commencement or as the result of a deception made before its commencement.

### **Dishonestly retaining a wrongful credit under the Theft Act 1968**

Paragraph 5 ensures that this Act will not affect the operation of section 24A in relation to credits falling within section 24A(3) and (4) and made before its commencement.

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**Scope of offences relating to stolen goods under the [Theft Act \(Northern Ireland\) 1969 \(c.16 \(N.I.\)\)](#)**

Paragraph 6 ensures that the amendments made by paragraph 11 of Schedule 1 to this Act will not affect the operation of section 23 in relation to goods obtained as the result of a deception made before the commencement of paragraph 11.

**Dishonestly retaining a wrongful credit under the [Theft Act \(Northern Ireland\) 1969](#)**

Paragraph 7 ensures that the amendments made by paragraph 12 of Schedule 1 to this Act will not affect the operation of section 23A in relation to credits falling within section 23A(3) and (4) and made before the commencement of paragraph 12.

**Limiting periods under the [Limitation Act 1980 \(c.58\)](#)**

Paragraph 8 ensures that this Act will not affect the operation of section 4 in relation to chattels obtained before its commencement or as the result of a deception made before its commencement.

**Limitation periods under the [Limitation \(Northern Ireland\) Order 1989 \(S.I. 1989/1339 \(N.I. 11\)\)](#)**

Paragraph 9 ensures that the amendments made by paragraph 23 of Schedule 1 to this Act will not affect the operation of Article 18 in relation to chattels obtained as the result of a deception made before the commencement of paragraph 23.

**Scheduled offences under the [Terrorism Act 2000 \(c.11\)](#)**

Paragraph 10 ensures that the amendments made by paragraph 28 of Schedule 1 to this Act will not affect the operation of Part 7 of the Terrorism Act 2000 in relation to an offence under section 15(1) of the Theft Act (Northern Ireland) 1969 where the obtaining is a result of a deception made before the commencement of paragraph 28.

**Powers of arrest under [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c.19\)](#)**

Paragraph 11 ensures that the amendment to the 2004 Act made by paragraph 33 of Schedule 1 to this Act does not affect offences committed partly before the commencement of this Act.