



# Serious Crime Act 2007

## 2007 CHAPTER 27

VALID FROM 01/10/2008

### PART 2

#### ENCOURAGING OR ASSISTING CRIME

##### *Inchoate offences*

#### **44 Intentionally encouraging or assisting an offence**

- (1) A person commits an offence if—
- (a) he does an act capable of encouraging or assisting the commission of an offence; and
  - (b) he intends to encourage or assist its commission.
- (2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

#### **45 Encouraging or assisting an offence believing it will be committed**

A person commits an offence if—

- (a) he does an act capable of encouraging or assisting the commission of an offence; and
- (b) he believes—
  - (i) that the offence will be committed; and
  - (ii) that his act will encourage or assist its commission.

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#### **46 Encouraging or assisting offences believing one or more will be committed**

- (1) A person commits an offence if—
  - (a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and
  - (b) he believes—
    - (i) that one or more of those offences will be committed (but has no belief as to which); and
    - (ii) that his act will encourage or assist the commission of one or more of them.
- (2) It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.
- (3) If a person is charged with an offence under subsection (1)—
  - (a) the indictment must specify the offences alleged to be the “number of offences” mentioned in paragraph (a) of that subsection; but
  - (b) nothing in paragraph (a) requires all the offences potentially comprised in that number to be specified.
- (4) In relation to an offence under this section, reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection (3)(a).

#### **47 Proving an offence under this Part**

- (1) Sections 44, 45 and 46 are to be read in accordance with this section.
- (2) If it is alleged under section 44(1)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence.
- (3) If it is alleged under section 45(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed—
  - (a) that an act would be done which would amount to the commission of that offence; and
  - (b) that his act would encourage or assist the doing of that act.
- (4) If it is alleged under section 46(1)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed—
  - (a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and
  - (b) that his act would encourage or assist the doing of one or more of those acts.
- (5) In proving for the purposes of this section whether an act is one which, if done, would amount to the commission of an offence—
  - (a) if the offence is one requiring proof of fault, it must be proved that—
    - (i) D believed that, were the act to be done, it would be done with that fault;
    - (ii) D was reckless as to whether or not it would be done with that fault;or

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- (iii) D's state of mind was such that, were he to do it, it would be done with that fault; and
- (b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that—
  - (i) D believed that, were the act to be done, it would be done in those circumstances or with those consequences; or
  - (ii) D was reckless as to whether or not it would be done in those circumstances or with those consequences.
- (6) For the purposes of subsection (5)(a)(iii), D is to be assumed to be able to do the act in question.
- (7) In the case of an offence under section 44—
  - (a) subsection (5)(b)(i) is to be read as if the reference to “D believed” were a reference to “D intended or believed”; but
  - (b) D is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of his act of encouragement or assistance.
- (8) Reference in this section to the doing of an act includes reference to—
  - (a) a failure to act;
  - (b) the continuation of an act that has already begun;
  - (c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).
- (9) In the remaining provisions of this Part (unless otherwise provided) a reference to the anticipated offence is—
  - (a) in relation to an offence under section 44, a reference to the offence mentioned in subsection (2); and
  - (b) in relation to an offence under section 45, a reference to the offence mentioned in subsection (3).

#### **48 Proving an offence under section 46**

- (1) This section makes further provision about the application of section 47 to an offence under section 46.
- (2) It is sufficient to prove the matters mentioned in section 47(5) by reference to one offence only.
- (3) The offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment.
- (4) Subsection (3) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 57.

#### **49 Supplemental provisions**

- (1) A person may commit an offence under this Part whether or not any offence capable of being encouraged or assisted by his act is committed.

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- (2) If a person's act is capable of encouraging or assisting the commission of a number of offences—
  - (a) section 44 applies separately in relation to each offence that he intends to encourage or assist to be committed; and
  - (b) section 45 applies separately in relation to each offence that he believes will be encouraged or assisted to be committed.
- (3) A person may, in relation to the same act, commit an offence under more than one provision of this Part.
- (4) In reckoning whether—
  - (a) for the purposes of section 45, an act is capable of encouraging or assisting the commission of an offence; or
  - (b) for the purposes of section 46, an act is capable of encouraging or assisting the commission of one or more of a number of offences;
 offences under this Part and listed offences are to be disregarded.
- (5) “Listed offence” means—
  - (a) in England and Wales, an offence listed in Part 1, 2 or 3 of Schedule 3; and
  - (b) in Northern Ireland, an offence listed in Part 1, 4 or 5 of that Schedule.
- (6) The Secretary of State may by order amend Schedule 3.
- (7) For the purposes of sections 45(b)(i) and 46(1)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

#### *Reasonableness defence*

### **50 Defence of acting reasonably**

- (1) A person is not guilty of an offence under this Part if he proves—
  - (a) that he knew certain circumstances existed; and
  - (b) that it was reasonable for him to act as he did in those circumstances.
- (2) A person is not guilty of an offence under this Part if he proves—
  - (a) that he believed certain circumstances to exist;
  - (b) that his belief was reasonable; and
  - (c) that it was reasonable for him to act as he did in the circumstances as he believed them to be.
- (3) Factors to be considered in determining whether it was reasonable for a person to act as he did include—
  - (a) the seriousness of the anticipated offence (or, in the case of an offence under section 46, the offences specified in the indictment);
  - (b) any purpose for which he claims to have been acting;
  - (c) any authority by which he claims to have been acting.

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### *Limitation on liability*

#### **51 Protective offences: victims not liable**

- (1) In the case of protective offences, a person does not commit an offence under this Part by reference to such an offence if—
  - (a) he falls within the protected category; and
  - (b) he is the person in respect of whom the protective offence was committed or would have been if it had been committed.
- (2) “Protective offence” means an offence that exists (wholly or in part) for the protection of a particular category of persons (“the protected category”).

### *Jurisdiction and procedure*

#### **52 Jurisdiction**

- (1) If a person (D) knows or believes that what he anticipates might take place wholly or partly in England or Wales, he may be guilty of an offence under section 44, 45 or 46 no matter where he was at any relevant time.
- (2) If it is not proved that D knows or believes that what he anticipates might take place wholly or partly in England or Wales, he is not guilty of an offence under section 44, 45 or 46 unless paragraph 1, 2 or 3 of Schedule 4 applies.
- (3) A reference in this section (and in any of those paragraphs) to what D anticipates is to be read as follows—
  - (a) in relation to an offence under section 44 or 45, it refers to the act which would amount to the commission of the anticipated offence;
  - (b) in relation to an offence under section 46, it refers to an act which would amount to the commission of any of the offences specified in the indictment.
- (4) In their application to Northern Ireland, this section and Schedule 4 have effect as if references to—
  - (a) England or Wales; and
  - (b) England and Wales;were references to Northern Ireland.
- (5) Nothing in this section or Schedule 4 restricts the operation of any enactment by virtue of which an act constituting an offence under this Part is triable under the law of England and Wales or Northern Ireland.

#### **53 Prosecution of offences triable by reason of Schedule 4**

No proceedings for an offence triable by reason of any provision of Schedule 4 may be instituted—

- (a) in England and Wales, except by, or with the consent of, the Attorney General; or
- (b) in Northern Ireland, except by, or with the consent of, the Advocate General for Northern Ireland.

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#### **54 Institution of proceedings etc. for an offence under this Part**

- (1) Any provision to which this section applies has effect with respect to an offence under this Part as it has effect with respect to the anticipated offence.
- (2) This section applies to provisions made by or under an enactment (whenever passed or made) that—
  - (a) provide that proceedings may not be instituted or carried on otherwise than by, or on behalf or with the consent of, any person (including any provision which also makes exceptions to the prohibition);
  - (b) confer power to institute proceedings;
  - (c) confer power to seize and detain property;
  - (d) confer a power of forfeiture, including any power to deal with anything liable to be forfeited.
- (3) In relation to an offence under section 46—
  - (a) the reference in subsection (1) to the anticipated offence is to be read as a reference to any offence specified in the indictment; and
  - (b) each of the offences specified in the indictment must be an offence in respect of which the prosecutor has power to institute proceedings.
- (4) Any consent to proceedings required as a result of this section is in addition to any consent required by section 53.
- (5) No proceedings for an offence under this Part are to be instituted against a person providing information society services who is established in an EEA State other than the United Kingdom unless the derogation condition is satisfied.
- (6) The derogation condition is satisfied where the institution of proceedings—
  - (a) is necessary to pursue the public interest objective;
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to it; and
  - (c) is proportionate to that objective.
- (7) The public interest objective is public policy.
- (8) In this section “information society services” has the same meaning as in section 34, and subsection (7) of that section applies for the purposes of this section as it applies for the purposes of that section.

#### **55 Mode of trial**

- (1) An offence under section 44 or 45 is triable in the same way as the anticipated offence.
- (2) An offence under section 46 is triable on indictment.

#### **56 Persons who may be perpetrators or encouragers etc.**

- (1) In proceedings for an offence under this Part (“the inchoate offence”) the defendant may be convicted if—
  - (a) it is proved that he must have committed the inchoate offence or the anticipated offence; but
  - (b) it is not proved which of those offences he committed.

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- (2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because he aided, abetted, counselled or procured its commission.
- (3) In relation to an offence under section 46, a reference in this section to the anticipated offence is to be read as a reference to an offence specified in the indictment.

## **57 Alternative verdicts and guilty pleas**

- (1) If in proceedings on indictment for an offence under section 44 or 45 a person is not found guilty of that offence by reference to the specified offence, he may be found guilty of that offence by reference to an alternative offence.
- (2) If in proceedings for an offence under section 46 a person is not found guilty of that offence by reference to any specified offence, he may be found guilty of that offence by reference to one or more alternative offences.
- (3) If in proceedings for an offence under section 46 a person is found guilty of the offence by reference to one or more specified offences, he may also be found guilty of it by reference to one or more other alternative offences.
- (4) For the purposes of this section, an offence is an alternative offence if—
  - (a) it is an offence of which, on a trial on indictment for the specified offence, an accused may be found guilty; or
  - (b) it is an indictable offence, or one to which section 40 of the Criminal Justice Act 1988 (c. 33) applies (power to include count for common assault etc. in indictment), and the condition in subsection (5) is satisfied.
- (5) The condition is that the allegations in the indictment charging the person with the offence under this Part amount to or include (expressly or by implication) an allegation of that offence by reference to it.
- (6) Subsection (4)(b) does not apply if the specified offence, or any of the specified offences, is murder or treason.
- (7) In the application of subsection (5) to proceedings for an offence under section 44, the allegations in the indictment are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.
- (8) Section 49(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.
- (9) In this section—
  - (a) in relation to a person charged with an offence under section 44 or 45, “the specified offence” means the offence specified in the indictment as the one alleged to be the anticipated offence;
  - (b) in relation to a person charged with an offence under section 46, “specified offence” means an offence specified in the indictment (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.
- (10) A person arraigned on an indictment for an offence under this Part may plead guilty to an offence of which he could be found guilty under this section on that indictment.

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- (11) This section applies to an indictment containing more than one count as if each count were a separate indictment.
- (12) This section is without prejudice to—
- (a) section 6(1)(b) and (3) of the Criminal Law Act 1967 (c. 58);
  - (b) section 6(1)(b) and (2) of the Criminal Law Act (Northern Ireland) 1967 (c. 18).

## **58 Penalties**

- (1) Subsections (2) and (3) apply if—
- (a) a person is convicted of an offence under section 44 or 45; or
  - (b) a person is convicted of an offence under section 46 by reference to only one offence (“the reference offence”).
- (2) If the anticipated or reference offence is murder, he is liable to imprisonment for life.
- (3) In any other case he is liable to any penalty for which he would be liable on conviction of the anticipated or reference offence.
- (4) Subsections (5) to (7) apply if a person is convicted of an offence under section 46 by reference to more than one offence (“the reference offences”).
- (5) If one of the reference offences is murder, he is liable to imprisonment for life.
- (6) If none of the reference offences is murder but one or more of them is punishable with imprisonment, he is liable—
- (a) to imprisonment for a term not exceeding the maximum term provided for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph where the terms provided differ); or
  - (b) to a fine.
- (7) In any other case he is liable to a fine.
- (8) Subsections (3), (6) and (7) are subject to any contrary provision made by or under—
- (a) an Act; or
  - (b) Northern Ireland legislation.
- (9) In the case of an offence triable either way, the reference in subsection (6) to the maximum term provided for that offence is a reference to the maximum term so provided on conviction on indictment.

### *Consequential alterations of the law*

## **59 Abolition of common law replaced by this Part**

The common law offence of inciting the commission of another offence is abolished.

## **60 Amendments relating to service law**

Schedule 5 (which amends enactments relating to service law) has effect.



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## **61 Repeal of offence of enabling unauthorised access to computer material**

- (1) The Police and Justice Act 2006 (c. 48) is amended as follows.
- (2) In section 35 (unauthorised access to computer material), omit subsection (2).
- (3) In section 36 (unauthorised acts with intent to impair operation of computer, etc.), in the section to be substituted for section 3 of the Computer Misuse Act 1990 (c. 18)—
  - (a) in subsection (2)—
    - (i) at the end of paragraph (b), insert “ or ”; and
    - (ii) omit paragraph (d) and the word “or” preceding it;
  - (b) in subsection (3) for “to (d)” substitute “ to (c) ”.
- (4) In section 38 (transitional and saving provision), omit subsection (1).
- (5) In Schedule 14 (minor and consequential amendments), omit paragraphs 19(2) and 29(2).

## **62 No individual liability in respect of corporate manslaughter**

In section 18 of the Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19) (no individual liability for offences under that Act) after subsection (1) insert—

“(1A) An individual cannot be guilty of an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) by reference to an offence of corporate manslaughter.”

## **63 Consequential amendments: Part 2**

- (1) In the provisions listed in Part 1 of Schedule 6, any reference however expressed to (or to conduct amounting to) the offence abolished by section 59 has effect as a reference to (or to conduct amounting to) the offences under this Part.
- (2) Part 2 of Schedule 6 contains other minor and consequential amendments.
- (3) The Secretary of State may by order amend Part 1 of Schedule 6 by adding or removing a provision.

*Interpretation: Part 2*

## **64 Encouraging or assisting the commission of an offence**

A reference in this Part to encouraging or assisting the commission of an offence is to be read in accordance with section 47.

## **65 Being capable of encouraging or assisting**

- (1) A reference in this Part to a person's doing an act that is capable of encouraging the commission of an offence includes a reference to his doing so by threatening another person or otherwise putting pressure on another person to commit the offence.
- (2) A reference in this Part to a person's doing an act that is capable of encouraging or assisting the commission of an offence includes a reference to his doing so by—

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- (a) taking steps to reduce the possibility of criminal proceedings being brought in respect of that offence;
  - (b) failing to take reasonable steps to discharge a duty.
- (3) But a person is not to be regarded as doing an act that is capable of encouraging or assisting the commission of an offence merely because he fails to respond to a constable's request for assistance in preventing a breach of the peace.

**66 Indirectly encouraging or assisting**

If a person (D1) arranges for a person (D2) to do an act that is capable of encouraging or assisting the commission of an offence, and D2 does the act, D1 is also to be treated for the purposes of this Part as having done it.

**67 Course of conduct**

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

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