



# Serious Crime Act 2007

## 2007 CHAPTER 27

### 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.

##### **Modifications etc. (not altering text)**

- C1** Pt. 2 restricted by 2007 c. 19, s. 18(1A) (as inserted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), **ss. 62, 94(1)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a))

##### **Commencement Information**

- I1** S. 44 in force at 1.10.2008 by S.I. 2008/2504, art. 2(a)

#### **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—

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- (i) that the offence will be committed; and
- (ii) that his act will encourage or assist its commission.

**Commencement Information**

**I2** S. 45 in force at 1.10.2008 by S.I. 2008/2504, art. 2(a)

**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).

**Commencement Information**

**I3** S. 46 in force at 1.10.2008 by S.I. 2008/2504, art. 2(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.

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- (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
    - (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).

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**Commencement Information**

**I4** S. 47 in force at 1.10.2008 by S.I. 2008/2504, art. 2(a)

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#### 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.

#### Commencement Information

**I5** S. 48 in force at 1.10.2008 by S.I. 2008/2504, art. 2(a)

#### 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.
  - (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.
- [<sup>F1</sup>(6A) The power to make an order under subsection (6) for the purposes of subsection (5) (b) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

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(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.

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**Textual Amendments**

**F1** S. 49(6A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), **Sch. 10 para. 8(2)** (with arts. 28-31)

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**Commencement Information**

**I6** S. 49 in force at 1.10.2008 by S.I. 2008/2504, **art. 2(a)**

**Changes to legislation:**

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