

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Terrorist Acts and Threats: Jurisdiction

Section 52: Jurisdiction for terrorist offences

110. The main UK legislation on counter-terrorism is the Terrorism Act 2000 (the “Terrorism Act”). The Terrorism Act defines terrorism as being both a serious criminal act, and one that is designed to influence the government or to intimidate the public and made for the purpose of advancing a political, religious or ideological cause. Under UK law, in general, there are no “terrorist” offences (apart from a few specific offences such as directing terrorism, weapons training, terrorist funding and inciting terrorism). Suspected terrorists are prosecuted under criminal legislation such as murder, conspiracy to cause explosions, for example. Criminal offences falling within the definition of terrorism contained within the Terrorism Act can be investigated by the police using the powers within the Terrorism Act. The UK’s extensive anti-terrorism legislation already broadly meets the requirements of the 2002 Framework Decision, with the exception of the provisions on extra-territorial jurisdiction.
111. Article 9 of the 2002 Framework Decision requires participating countries to take extra-territorial jurisdiction for specified offences where these are committed for a terrorist purpose. Existing UK legislation does not provide for this because the primary basis of criminal jurisdiction in the differing parts of the UK is territorial, which has the effect that, unless a criminal statute expressly provides for extra-territorial jurisdiction, jurisdiction is only in respect of offences which take place in that part of the UK. There is already provision for extra-territorial jurisdiction in the Terrorism Act for terrorist financing and terrorist bombing offences. These provisions allowed the UK to ratify the UN Convention for the Suppression of Terrorist bombings and the UN Convention for the Suppression of the Financing of Terrorism (see sections 62 and 63 respectively). The provisions enable the UK to meet its obligations under the “extradite or prosecute” provisions of these Conventions.
112. The purpose of Article 9 of the 2002 Framework Decision is to ensure that Member States take responsibility for terrorist activities by their own nationals and residents, no matter where those acts occur, and also to ensure that those who attack UK nationals, residents, UK diplomatic staff and EU institutions can be prosecuted effectively. The first section inserts extra sections 63 A to E after section 63 of the Terrorism Act.

63A Other terrorist offences under this Act: jurisdiction

113. Section 63A extends the jurisdiction of specific terrorist offences included within the Terrorism Act to outside the UK for section 54 (weapons training) and sections 56 to 61 inclusive (directing a terrorist organisation, possession for terrorist purposes, collection of information, and inciting terrorism overseas). Extra-territorial jurisdiction

is only taken in respect of UK nationals and residents. Subsections (2) and (3) define respectively a UK national and a UK resident for the purposes of sections 63A, 63B and 63C.

114. Where an extra-territorial offence is created, extra-territorial jurisdiction is also automatically taken over secondary and inchoate offences, such as aiding, abetting, attempting, inciting, conspiring, counselling or procuring.

63B Terrorist attacks abroad by UK residents or nationals: jurisdiction

115. Section 63B(1) gives the UK extra-territorial jurisdiction over certain specific domestic offences where they are committed by UK nationals or residents outside the UK as an act of terrorism or for the purposes of terrorism. Subsection (2) lists the specific offences. These reflect those contained in Article 1 of the 2002 Framework Decision. The 2002 Framework Decision uses a similar definition of terrorism to that in the Terrorism Act. This new section and the sections below depend on the definition of terrorism in section 1 of the Terrorism Act to ensure that extra-territorial jurisdiction is only taken for acts that would be considered acts of terrorism under the Terrorism Act.

63C Terrorist attacks abroad on UK nationals, residents and diplomatic staff etc.: jurisdiction

116. Section 63C(1) gives the UK extra-territorial jurisdiction over certain domestic offences where they are committed against UK nationals or residents and “protected persons” outside the UK as an act of terrorism or for the purposes of terrorism. The nationality or residence of the offender is irrelevant. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsection (3) specifies those persons who are “protected persons”. “Protected persons” includes all diplomatic and consular staff, whether of UK nationality or not. Since Article 9(1)(e) of the 2002 Framework Decision requires Member States to take extra-territorial jurisdiction over offences against institutions of the EU established on their territory, subsection (3)(c) includes in the definition of “protected persons” employees of the European Agency for the Evaluation of Medicinal Products, which is at present the only EU institution based in the UK. Should further EU agencies set up in the UK in future, subsection (3)(d) provides a power for the Secretary of State to add further bodies by order. Subsection (4) limits subsection (3)(d) to any future EU institution based in the UK. Subsection (5) provides that a certificate issued by the Secretary of State stating any fact relating to whether a person is a “protected person” is to be conclusive evidence of that fact.

63D:

Terrorist attacks or threats in connection with UK diplomatic premises etc.: jurisdiction

117. This section gives the UK jurisdiction over terrorist offences or the threat of terrorist offences committed either against the residential or working premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. This will cover attacks on UK embassies and consulates abroad. This is to give effect to Article 9(1)(e) of the 2002 Framework Decision, which requires Member States to take extra-territorial jurisdiction in cases of terrorist attack on their institutions. At present if a terrorist act is committed against UK diplomatic residencies, any proceedings have to be brought by the relevant authorities of the country in which the incident took place. Under these new provisions, the UK government would be able to prosecute effectively those who attack or threaten to attack its personnel and premises. Subsection (1) provides that the UK will take extra-territorial jurisdiction over certain domestic offences where they are committed against the premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsections (3) and (4) provide that in addition the UK will take extra-territorial jurisdiction over the threat offences in the Criminal Damage Act 1971, (and

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its Northern Ireland equivalent, and, in Scotland, breach of the peace), when committed in respect of protected persons' premises or vehicles, as an act of terrorism or for the purposes of terrorism.

63E Sections 63B to 63D: supplementary

118. This section provides that the Attorney General's consent is required for prosecutions in England and Wales in respect of conduct which would not be an offence apart from sections 63B, C and D and the consent of the Advocate General for Northern Ireland in respect of prosecutions in Northern Ireland. In relation to offences under sections 54 to 61 of the Terrorism Act, section 117 makes provision for consent to prosecution. No express provision is required for Scotland. The Lord Advocate has responsibility for all prosecutions.

Section 53: Jurisdiction for offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001

119. This section provides for extra territorial jurisdiction over offences under section 113 of the Anti-terrorism, Crime and Security Act 2001 (offences involving noxious substances) by adding section 113A. It is an offence under section 113 for a person to use or threaten to use a biological, chemical, radioactive or other noxious substance to cause various kinds of serious harm in a manner designed to influence the government or intimidate the public. Offences under this section carry a sentence of up to 14 years' imprisonment and a fine. Extra-territorial jurisdiction for offences under section 113 are confined however to those committed for a terrorist purpose in the sense that it is undertaken for the purpose of advancing a political religious or ideological cause through subsection (2). Subsection (3) outlines the circumstances when extra-territorial jurisdiction is to be taken. These are the same as in the sections above, namely; when the act is by a United Kingdom national or resident; by any person to a United Kingdom national, resident or protected person; and by anyone against the premises or vehicle of a protected person when they are in or on it.