

# CORONERS AND JUSTICE ACT 2009

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 2 - Criminal offences**

#### *Chapter 1: Murder, infanticide and suicide*

#### **Section 52: Persons suffering from diminished responsibility (England and Wales)**

327. The effect of section 52 is to replace the current definition of the partial defence of diminished responsibility with a modernised definition based on the concept of “an abnormality of mental functioning” arising from a “recognised medical condition”. The new definition requires that the abnormality substantially impaired the defendant’s ability to do one (or more) of three things and also provides that the defendant’s abnormality of mental functioning should be at least a significant contributory factor in causing the defendant’s acts or omissions.
328. *Subsection (1)* replaces the current subsection (1) of section 2 of the Homicide Act 1957 (the 1957 Act) with new subsections (1) to (1B). The amended section provides that a person is not to be convicted of murder if he or she was suffering from an abnormality of mental functioning which meets the three conditions set out in new section 2(1)(a) to (c). As now, under section 2(2) of the 1957 Act, the person will be convicted of the offence of manslaughter instead of murder.
329. New section 2(1)(a) sets out that the abnormality of mental functioning has to arise from a recognised medical condition. New section 2(1)(b) provides that the abnormality of mental functioning must have impaired the defendant’s ability to do one or more of the things mentioned in new section 2(1A). These are the ability of that person to understand the nature of his or her conduct, to form a rational judgement or to exercise self-control. This contrasts with the existing definition of the partial defence which requires a person’s mental responsibility to be substantially impaired but does not specify in what respects this must be so.
330. New section 2(1)(c) sets out that, in order for the partial defence to apply, the abnormality of mental functioning must provide an explanation for the defendant’s involvement in the killing. New section 2(1B) clarifies that this will be the case where the abnormality was at least a significant contributory factor in causing the defendant to carry out the conduct.
331. *Subsection (2)* updates the language of section 6 of the Criminal Procedure (Insanity) Act 1964 insofar as it refers to the partial defence of diminished responsibility.

#### **Section 53: Persons suffering from diminished responsibility (Northern Ireland)**

332. This section makes provision for Northern Ireland equivalent to section 52.

**Section 54: Partial defence to murder: loss of control**

333. Provocation is a common law partial defence supplemented by section 3 of the 1957 Act. Under the partial defence, a defendant who would otherwise be guilty of murder will be guilty of manslaughter instead if he or she was provoked by things said or done (or both) to lose self-control, and in the opinion of the jury the provocation was enough to make a reasonable person do as the defendant did.
334. **Section 56** abolishes the common law partial defence of provocation and replaces it with a new partial defence to murder of “loss of control” at sections 54 and 55.
335. **Section 54** sets out the criteria which need to be met in order for the new partial defence of loss of self-control to be successful.
336. **Subsection (1)** lists those as:
- a) the defendant’s conduct resulted from a loss of self-control,
  - b) the loss of self-control had a qualifying trigger (which is defined in section 55), and
  - c) a person of the defendant’s sex and age with an ordinary level of tolerance and self-restraint and in the circumstances of the defendant might have acted in the same or similar way to the defendant.
337. **Subsection (2)** clarifies that the loss of control described in subsection (1) need not be sudden. Under the existing common law partial defence of provocation, the courts have held that the loss of self-control must be sudden. Case law has developed over time to the effect that the partial defence might still apply though where there was a delay between the provocative incident and the killing. The length of time between the incident and the killing does however affect whether there is sufficient evidence of a loss of self-control for the judge to leave the issue to the jury, and how readily a jury accepts that the defendant had indeed lost his or her self-control at the time of the killing. Although subsection (2) in the new partial defence makes clear that it is not a requirement for the new partial defence that the loss of self control be sudden, it will remain open, as at present, for the judge (in deciding whether to leave the defence to the jury) and the jury (in determining whether the killing did in fact result from a loss of self-control and whether the other aspects of the partial defence are satisfied) to take into account any delay between a relevant incident and the killing.
338. **Subsection (3)** supplements subsection (1)(c) by clarifying that the reference to the defendant’s circumstances in that subsection means all of those circumstances except those whose only relevance to the defendant’s conduct is that they impact upon the defendant’s general level of tolerance and self-restraint. Thus, a defendant’s history of abuse at the hands of the victim could be taken into account in deciding whether an ordinary person might have acted as the defendant did, whereas the defendant’s generally short temper could not. Consequently, when applying the test in subsection (1)(c) the jury will consider whether a person of the defendant’s sex and age with an ordinary level of tolerance and self-restraint and in the defendant’s specific circumstances (in the sense described earlier in this paragraph) might have acted as the defendant did.
339. **Subsection (4)** ensures that those acting in a considered desire for revenge cannot rely on the partial defence, even if they lose self-control as a result of a qualifying trigger.
340. **Subsection (5)** clarifies where the burden of proof lies in murder cases where the partial defence is raised. If sufficient evidence of the partial defence is raised, the burden of disproving the defence beyond reasonable doubt rests with the prosecution. It is supplemented by **subsection (6)** which confirms that for the purposes of subsection (5) the evidence will be sufficient to raise an issue as to the defence where a jury, properly directed, could reasonably conclude that the partial defence might apply. It will be

a matter of law, and therefore for a judge to decide, whether sufficient evidence has been raised to leave the partial defence to the jury. This differs from the position with the existing partial defence of provocation where, if there is evidence that a person was provoked to lose his or her self-control, the judge is required by section 3 of the 1957 Act to leave the partial defence to the jury even where no jury could reasonably conclude that a reasonable person would have reacted as the defendant did. Where there is sufficient evidence for the issue to be considered by the jury, the burden will be on the prosecution to disprove it. This is the same burden of proof as other defences, including self-defence.

341. *Subsection (7)* sets out that, when the defence is successful, the defendant will be guilty of manslaughter instead of murder.
342. *Subsection (8)* provides that even if one party to a killing is found not guilty of murder on the grounds of the partial defence of loss of self control, this does not affect the position of any other person who may be liable for murder in respect of the killing.

### **Section 55: Meaning of “qualifying trigger”**

343. *Section 55* defines the term “qualifying trigger” for purposes of section 54. Under section 54 (1)(b) the loss of self-control must have a qualifying trigger in order for the partial defence to apply.
344. *Subsections (2) to (5)* set out that the qualifying triggers for a loss of self-control are where the loss of self-control was attributable to a fear of serious violence, to certain things done or said (or both) or to a combination of both of these.
345. *Subsection (3)* deals with cases where the defendant lost self-control because of his or her fear of serious violence from the victim. As in the complete defence of self-defence, this will be a subjective test and the defendant will need to show that he or she lost self-control because of a genuine fear of serious violence, whether or not the fear was in fact reasonable. The fear of serious violence needs to be in respect of violence against the defendant or against another identified person. For example, the fear of serious violence could be in respect of a child or other relative of the defendant, but it could not be a fear that the victim would in the future use serious violence against people generally.
346. *Subsection (4)* sets out when a thing or things done or said (or both) can amount to a qualifying trigger for the loss of self-control. The thing(s) done or said must amount to circumstances of an extremely grave character and cause the defendant to have a justifiable sense of being seriously wronged. Whether a defendant’s sense of being seriously wronged is justifiable will be an objective question for a jury to determine (assuming that there is sufficient evidence for the defence to be left to the jury).
347. *Subsection (4)* therefore sets a very high threshold for the circumstances in which a partial defence is available where a person loses self-control in response to words or actions. The effect is to substantially narrow the potential availability of a partial defence in cases where a loss of control is attributable to things done or said compared to the current partial defence of provocation (where no threshold exists in relation to the provoking circumstances).
348. *Subsection (5)* allows the loss of self-control to be triggered by a combination of a fear of serious violence and a thing or things done or said which constitute circumstances of an extremely grave character and cause the defendant to have a justifiable sense of being seriously wronged.
349. *Subsection (6)* makes further provision in relation to determining whether a loss of self-control has a qualifying trigger:
  - *Subsection (6)(a)* provides that, when the defendant’s fear of serious violence was caused by something that the defendant incited for the purpose of providing an excuse to use violence, it is to be disregarded. The effect is that, in such a situation,

the person would not be able to claim a partial defence based on his or her fear of serious violence as referred to in section 55(3).

- Subsection (6)(b) provides that, when the defendant's sense of being seriously wronged by a thing done or said relates to something that the defendant incited for the purpose of providing an excuse to use violence, the sense of being seriously wronged is not justifiable. The effect is that, in such a situation, the person would not be able to claim a partial defence based on the relevant things done or said as referred to in section 55(4).
- Subsection (6)(c) provides that, in determining whether a loss of self-control has a qualifying trigger, the fact that a thing done or said amounted to sexual infidelity is to be disregarded. So, if a thing done or said, as referred to in section 55(4), amounts to sexual infidelity, that fact is disregarded in determining whether the qualifying trigger in section 55(4) applies. The effect is that, if a person kills another because they have been unfaithful, he or she will not be able to claim the partial defence. It is the fact of sexual infidelity that falls to be disregarded under the provision, so the thing done or said can still potentially amount to a qualifying trigger if (ignoring the sexual infidelity) it amounts nonetheless to circumstances of an extremely grave character causing the defendant to have a justifiable sense of being seriously wronged. This may arise only rarely, but an example of where it might be relevant is where a person discovers their partner sexually abusing their young child (an act that amounts to sexual infidelity) and loses self-control and kills. The fact that the partner's act amounted to sexual infidelity must be discounted but that act may still potentially be claimed to amount to the qualifying trigger in section 55(4) on the basis of the other aspects of the case (namely the child abuse).

### ***Section 56: Abolition of common law defence of provocation***

350. **Section 56** abolishes the common law defence of provocation, and consequently repeals section 3 of 1957 Act and the equivalent Northern Ireland provision, namely section 7 of the Criminal Justice Act (Northern Ireland) 1966. Section 3 supplemented the common law principles relating to provocation by providing that the issue of whether the provocation was enough to make a reasonable person do as the defendant did should be left to be determined by the jury. This has been interpreted as meaning that a judge must leave the partial defence to the jury even where the evidence is such that no jury properly directed could reasonably conclude that a reasonable person would have reacted as the defendant did. This is in contrast to the common law position that existed prior to the Homicide Act 1957, where the judge was not required to leave the issue to the jury in such circumstances.

### ***Section 57: Infanticide (England and Wales)***

351. **Section 57** amends section 1 of the Infanticide Act 1938 so that it is clear that the offence and defence of infanticide are available only in respect of a woman who would otherwise be found guilty of murder or manslaughter. Whilst it had generally been assumed in the past that infanticide could apply only in circumstances that would otherwise amount to the offence of murder, the Court of Appeal ruled in *R v Gore* [2007] EWCA Crim 2789 that section 1 may apply whenever the requirements of infanticide are made out regardless of what offence would otherwise have been committed.
352. **Section 57** limits infanticide to cases that would otherwise be murder or manslaughter through two changes. The first is to replace the words "notwithstanding that" with the word "if". This resolves an uncertainty that has existed in the past about the meaning of the term "notwithstanding that" which at different times has been interpreted as meaning "even if" and "provided that".
353. The second is to explicitly state that infanticide can apply (provided all the other criteria for infanticide apply) where the offence would otherwise be murder *or manslaughter*.

354. The combined effect of the two changes is that infanticide can apply “if the circumstances were such that but for the Infanticide Act 1938 the offence would have amounted to murder or manslaughter”.

***Section 58: Infanticide (Northern Ireland)***

355. This section makes provision for Northern Ireland equivalent to section 57.

***Section 59: Encouraging or assisting suicide: England and Wales***

356. Section 2(1) of the Suicide Act 1961 provides that a person who “aids, abets, counsels or procures” the suicide or attempted suicide of another person commits an offence (the substantive offence). By virtue of section 1 of the Criminal Attempts Act 1981 it is also an offence to attempt to aid, abet, counsel or procure the suicide or attempted suicide of another person (the attempt offence). Section 59 replaces the substantive and attempt offences with a single offence expressed in terms of “encouraging or assisting” the suicide or attempted suicide of another person. Paragraph 58 of Schedule 21 therefore disapplies the Criminal Attempts Act 1981 in respect of an offence under section 2 of the Suicide Act 1961. The section simplifies and modernises the law with the aim of improving understanding of this area of the law. It is in line with the case law relating to the existing substantive and attempt offences. The section does not change the scope of the current law, when section 2 of the Suicide Act 1961 is read in combination with section 1 of the Criminal Attempts Act 1981.

357. *Subsection (2)* replaces section 2(1) of the Suicide Act 1961. It provides that a person commits an offence if he or she does an act which is capable of encouraging or assisting another person to commit or attempt to commit suicide, and if he or she intends the act to encourage or assist another person to commit or attempt to commit suicide. The person committing the offence need not know, or even be able to identify, the other person. So, for example, the author of a website promoting suicide who intends that one or more of his or her readers will commit or attempt to commit suicide is guilty of an offence, even though he or she may never know the identity of those who access the website. The offence applies whether or not a person commits or attempts suicide.

358. *Subsection (3)* amends section 2(2) of the Suicide Act 1961 so that the language is consistent with the new section 2(1).

359. *Subsection (4)* inserts new sections 2A and 2B into the Suicide Act 1961. The new section 2A elaborates on what constitutes an act capable of encouraging or assisting suicide. New section 2A(1) provides that a person who arranges for someone else to do an act capable of encouraging or assisting the suicide or attempted suicide of another person will be liable for the offence if the other person does that act. New section 2A(2) has the effect that an act can be capable of encouraging or assisting suicide even if the circumstances are such that it was impossible for the act to actually encourage or assist suicide. An act is therefore treated as capable of encouraging and assisting suicide if it would have been so capable had the facts been as the defendant believed them to be at the time of the act (for example, if pills provided with the intention that they will assist a person to commit suicide are thought to be lethal but are in fact harmless) or had subsequent events happened as the defendant believed they would (for example, if lethal pills which were sent to a person with the intention that the person would use them to commit or attempt to commit suicide get lost in the post), or both. New section 2A(3) clarifies that references to doing an act capable of encouraging or assisting another to commit or attempt suicide include a reference to doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide. The new section 2B provides that an act includes a course of conduct.

***Section 60: Encouraging or assisting suicide (Northern Ireland)***

360. This section makes provision for Northern Ireland equivalent to section 59.

***Section 61 and Schedule 12: Encouraging or assisting suicide: providers of information society services***

361. **Section 61** and Schedule 12 ensure that the provisions outlined in sections 59 and 60 above are consistent with the UK's obligations under the E-Commerce Directive.
362. **Schedule 12** ensures that providers of information society services who are established in England, Wales or Northern Ireland are covered by the offence of encouraging or assisting suicide even when they are operating in other European Economic Area states. **Paragraphs 4 to 6** of the Schedule provide exemptions for internet service providers from the offence in limited circumstances, such as where they are acting as mere conduits for information that is capable, and provided with the intention, of encouraging or assisting suicide or are storing it as caches or hosts.

***Chapter 2: Images of children***

***Section 62: Possession of prohibited images of children***

363. **Subsection (1)** creates a new offence in England and Wales and Northern Ireland of possession of a prohibited image of a child.
364. **Subsections (2) to (8)** set out the definition of a "prohibited image of a child". Under subsection (2), in order to be a prohibited image, an image must be pornographic, fall within subsection (6) and be grossly offensive, disgusting or otherwise of an obscene character. The definition of "pornographic" is set out in subsection (3). An image must be of such a nature that it must reasonably be assumed to have been produced solely or mainly for the purpose of sexual arousal. Whether this threshold has been met will be an issue for a jury to determine. Subsection (4) makes it clear that where (as found in a person's possession) an individual image forms part of a series of images, the question of whether it is pornographic must be determined by reference both to the image itself and the context in which it appears in the series of images.
365. Subsection (5) expands on subsection (4). It provides that, where an image is integral to a narrative (for example a mainstream or documentary film) which when it is taken as a whole could not reasonably be assumed to be pornographic, the image itself may not be pornographic, even though if considered in isolation the contrary conclusion might have been reached.
366. Subsection (6) and (7) provide that a prohibited image for the purposes of the offence is one which focuses solely or principally on a child's genitals or anal region or portrays any of a list of acts set out in subsection (7).
367. Subsection (8) provides that for the purposes of subsection (7) penetration is a continuing act from entry to withdrawal.
368. **Subsection (9)** requires proceedings to be instituted by or with the consent of the Director of Public Prosecutions.

***Section 63: Exclusion of classified film, etc***

369. This section provides an exclusion from the scope of the offence under section 62 for excluded images.
370. An "excluded image" is defined in **subsection (2)** as an image which forms part of a series of images contained in a recording of the whole or part of a classified work. A "recording" is defined in **subsection (7)** as any disc, tape or other device capable of storing data electronically and from which images may be produced. This therefore includes images held on a computer. A classified work is a video work in respect of which a classification certificate has been issued by an authority designated under section 4 of the Video Recordings Act 1984.

371. The effect of the exclusion is that a person who has a video recording of a film which has been classified by the British Board of Film Classification (BBFC), and which contains images that, despite their context, might amount to a “prohibited image of a child” for the purposes of the section 62 offence, will not be liable for prosecution for the offence.
372. However, the effect of *subsection (3)* is that the exclusion from the scope of the offence does not apply in respect of images contained within extracts from classified films which must reasonably be assumed to have been extracted solely or principally for the purpose of sexual arousal. Essentially the exemption for an image forming part of a classified work is lost where the image is extracted from that work for pornographic purposes. Subsection (7) defines “extract” to include a single image.
373. *Subsection (4)* provides that when an extracted image is one of a series of images, in establishing whether or not it is of such a nature that it must reasonably be assumed to have been extracted for the purpose of sexual arousal, regard is to be had to the image itself and to the context in which it appears in the series of images. This is the same test as set out in subsection (4) of section 62. Subsection (5) of section 62 also applies in determining this question.
374. The effect of *subsection (5)* is that, in determining whether a recording is a recording of a whole or part of a classified work, alterations due to technical reasons (such as a failure in the recording system), due to inadvertence (such as setting the wrong time for a recording) or due to the inclusion of extraneous material (such as advertisements), are to be disregarded.
375. *Subsection (6)* makes it clear that nothing in section 63 affects any duty of a designated authority to take into account the offence in section 62 when considering whether to issue a classification certificate in respect of a video work.
376. *Subsection (7)* sets out the definitions used in this section. *Subsection (8)* states that section 22(3) of the Video Recordings Act 1984 applies. The effect of section 22(3) is that, where an alteration is made to a video work in respect of which a classification certificate has been issued, the classification certificate does not apply to the altered work.

#### ***Section 64: Defences***

377. This section sets out a series of defences to the section 62 offence of possession of prohibited images of children. These defences are set out in *subsection (1)*. They are the same as those for the offence of possession of indecent images of children under section 160(2) of the Criminal Justice Act 1988 and Article 15(2) of the Criminal Justice (Evidence etc) (Northern Ireland) Order 1988. They are:
- that the person had a legitimate reason for being in possession of the image (this will cover those who can demonstrate that their legitimate business means that they have a reason for possessing the image);
  - that the person had not seen the image and did not know, or have reasonable cause to suspect, that the images held were prohibited images of children (this will cover those who are in possession of offending images but are unaware of the nature of the images); and
  - that the person had not asked for the image – it having been sent without request – and that he or she had not kept it for an unreasonable period of time (this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it).
378. *Subsection (2)* provides that “prohibited image” in this section has the same meaning as in section 62.

**Section 65: Meaning of “image” and “child”**

379. This section defines “image” and “child” for the purposes of sections 62, 63 and 64. These definitions are applied to these sections by *subsection (1)*.
380. *Subsection (2)* sets out the definition of an image. It states that for the purposes of this offence, “an image” includes still images such as photographs, or moving images such as those in a film. The term “image” also incorporates any type of data, including that stored electronically (as on a computer disk), which is capable of conversion into an image. This covers material available on computers, mobile phones or any other electronic device.
381. *Subsection (3)* provides that “image” does not include an indecent photograph or indecent pseudo-photograph of a child, as these are subject to other controls. *Subsection (4)* defines “indecent photograph” and “indecent pseudo-photograph” in accordance with the Protection of Children Act 1978 and for Northern Ireland, the Protection of Children (Northern Ireland) Order 1978. “Indecent photograph” includes an indecent film, a copy of a photograph or film, a negative and electronic data capable of conversion into a photograph. It also includes a tracing or other image derived from the whole or part of a photograph or pseudo-photograph and electronic data capable of conversion into such an image. A pseudo-photograph is an image, whether made by computer-graphics or otherwise, which appears to be a photograph and includes a copy of a pseudo-photograph and electronic data capable of conversion into a pseudo-photograph.
382. *Subsection (5)* defines a child to be a person under 18 years of age.
383. *Subsection (6)* requires that a person in an image is to be treated as a child if the impression conveyed by the image is that the person shown is a child, or the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not of a child.
384. *Subsection (7)* provides that references to an image of a person include references to an imaginary person, and *subsection (8)* makes it clear that references to an image of a child include references to an imaginary child.

**Section 66: Penalties**

385. The penalties that will apply to persons found guilty of an offence under section 62 are set out in this section.
386. In England and Wales and Northern Ireland on conviction on indictment the maximum sentence is imprisonment for three years.
387. The maximum sentence on summary conviction of the offence in England and Wales is six months’ imprisonment. On the commencement of section 154(1) of the 2003 Act, the maximum sentence on summary conviction in England and Wales will rise to 12 months (see paragraph 12(1) of Schedule 22 to the Act). The maximum custodial penalty on summary conviction in Northern Ireland is six months.

**Section 67: Entry, search, seizure and forfeiture**

388. *Subsection (1)* applies the entry, search, seizure and forfeiture powers of the Protection of Children Act 1978 to prohibited images of children. *Subsection (2)* applies the equivalent Northern Ireland legislation.
389. *Subsection (3)* applies these powers to prohibited images to which section 62 applies.
390. Paragraph 12(2) of Schedule 22 to the Act provides that these powers of forfeiture have effect regardless of when the images were lawfully seized.



***Section 68 and Schedule 13: Special rules relating to providers of information society services***

391. [Section 68](#) and Schedule 13 ensure that the provisions outlined above which make it an offence to possess prohibited images of children are consistent with the UK's obligations under the E-Commerce Directive.
392. Under Schedule 13 providers of information society services who are established in England, Wales or Northern Ireland are covered by the new offence even when they are operating in other European Economic Area states. Paragraphs 3 to 5 of the Schedule provide exemptions for internet service providers from the offence of possession of prohibited images of children in limited circumstances, such as where they are acting as mere conduits for such material or are storing it as caches or hosts.

***Section 69: Indecent pseudo-photographs of children: marriage etc***

393. *Subsection (1)* amends section 1A of the Protection of Children Act 1978 to extend the "marriage and other relationships" defence to offences under that Act so that it applies in relation to "pseudo-photographs". The defence already applies to an offence under section 1(1)(a) of the Protection of Children Act 1978 of taking or making an indecent photograph of a child and to an offence under section 1(1)(b) or (c) of that Act relating to possession and distribution of an indecent photograph of a child.
394. *Subsection (2)* amends section 160A of the Criminal Justice Act 1988 to extend the "marriage and other relationships" defence to offences under that Act to "pseudo-photographs". The defence already applies to an offence under section 160 of the Criminal Justice Act 1988 relating to possessing an indecent photograph of a child.
395. *Subsection (3)* amends Article 15A of the [Criminal Justice \(Evidence etc.\) \(Northern Ireland\) Order 1988 \(SI 1988/1847 \(NI.17\)\)](#) to extend the "marriage and other relationships" defence to offences under that Order to "pseudo-photographs". The defence already applies to an offence under Article 15 of the [Criminal Justice \(Evidence etc.\) \(Northern Ireland\) Order 1988 \(SI 1988/1847 \(NI 17\)\)](#) relating to possession of an indecent photograph of a child.
396. *Subsection (4)* amends Article 3B of the [Protection of Children \(Northern Ireland\) Order 1978 \(SI 1978/1047 \(NI 17\)\)](#) to extend to the "marriage and other relationships" defence to offences under that Order to "pseudo-photographs". The defence already applies to an offence under Article 3(1)(a) of the [Protection of Children \(Northern Ireland\) Order 1978 \(SI 1978/1047 \(NI 17\)\)](#) of taking or making an indecent photograph of a child and to Article 3(1)(b) or (c) of that Order relating to possession and distribution of an indecent photograph of a child.

***Chapter 3: Other offences***

***Section 70: Genocide, crimes against humanity and war crimes***

397. [Section 70](#) makes amendments to Part 5 of the 2001 Act in respect of the offences of genocide, crimes against humanity and war crimes. The amendments extend to England and Wales and Northern Ireland.
398. *Subsection (3)* inserts a new section 65A into the 2001 Act. The new section makes provision for the retrospective application of the offences of genocide, crimes against humanity and war crimes and related offences to things done on or after 1st January 1991.
399. Subsections (1), (3), (4), (5) and (7) of new section 65A have the effect of applying certain offences to acts committed on or after 1 January 1991. Those offences are genocide, crimes against humanity, war crimes, conduct ancillary to such offences committed outside the jurisdiction, offences ancillary to those offences and offences based on the responsibility of commanders and other superiors for such offences. With

the exception of genocide and some of the categories of war crimes, the retrospective application of these offences is subject to a requirement that, at the time of its commission, the act constituting the offence amounted in the circumstances to a criminal offence under international law.

400. The effect of this requirement is to allow the courts to apply these offences in the 2001 Act to the extent that they were recognised in international law during the relevant period. So, for example, if a particular offence was recognised in international law at the time of the relevant conduct but in a narrower form than that of the offence set out in the 2001 Act, the defendant may still be convicted of the offence provided that his or her conduct met the elements of the offence as recognised at the relevant time in international law. The international law requirement ensures that the provisions comply with the principles enshrined in Article 7 of the ECHR. The requirement does not apply to genocide and certain categories of war crimes as it is beyond dispute that those offences (and all their constituent elements) were fully recognised in international law in 1991. The requirement is necessary for the other offences as, whilst the vast majority of them were recognised in international law during the relevant period, a small number may have been recognised in a narrower form than that provided for in the 2001 Act and a very small number of offences may not have been sufficiently recognised at all. In addition, international law developed during the period in question.
401. Subsection (3) also inserts a new section 65B into Part 5 of the 2001 Act. The new section modifies the penalties applicable to the offences for the period of retrospection (1 January 1991 to 1 September 2001) in respect of certain specific offences. The 2001 Act provides for a maximum sentence of 30 years' imprisonment (other than where murder is involved). The same will generally apply for offences committed from 1 January 1991. However for domestic genocide and grave breaches of the Geneva Conventions (a category of war crimes), both of which were already offences in domestic law in 1991, a maximum penalty of 14 years' imprisonment applies instead of 30 years' (other than where murder is involved). This provision ensures that a higher penalty cannot be imposed for such offences than existed in domestic law at the time of their commission and consequently ensures compliance with Article 7 of the ECHR.
402. Subsection (4) inserts a new section 67A into Part 5 of the 2001 Act to make supplemental provision about UK residents. Such residents are liable under the 2001 Act for offences committed abroad if they are resident at the time of committing the crime or subsequently become resident. New section 67A makes additional provision in respect of UK residents in two ways. First, subsection (1) lists a number of categories of person who are to be treated as being resident in the UK for the specific purposes of Part 5 of the 2001 Act to the extent this would not otherwise be the case. The specific categories are listed in paragraphs (a) to (j). Secondly, subsection (2) of new section 67A provides a non-exhaustive list of considerations a court must take into account in determining whether a person is resident in the UK.

### ***Section 71: Slavery, servitude and forced or compulsory labour***

403. Section 71 creates a new offence in England and Wales and Northern Ireland of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour. Subsection (1) creates the new offence.
404. Subsection (2) requires subsection (1) to be interpreted in accordance with Article 4 of the ECHR. Article 4 of the ECHR states:
- 1 No one shall be held in slavery or servitude.
  - 2 No one shall be required to perform forced or compulsory labour.
  - 3 For the purpose of this Article the term "forced or compulsory labour" shall not include:

*These notes refer to the Coroners and Justice Act 2009  
(c.25) which received Royal Assent on 12 November 2009*

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.
405. In England and Wales and Northern Ireland on conviction on indictment the maximum sentence for the new offence is imprisonment for 14 years.
406. The maximum sentence on summary conviction for the offence in England and Wales is six months' imprisonment. On the commencement of section 154(1) of the 2003 Act, the maximum sentence on summary conviction in England and Wales will rise to 12 months. The maximum custodial penalty on summary conviction in Northern Ireland is six months.

### ***Section 72: Conspiracy***

407. **Section 72** amends section 1A of the Criminal Law Act 1977 which sets out the conditions for the offence of "conspiracy to commit offences outside the United Kingdom". As a result section 1A will apply to conspiracies to commit offences "outside England and Wales", thereby including conspiracies to commit offences in Scotland or Northern Ireland (which are not currently covered by section 1A).
408. This change is achieved by widening the scope of the first condition in section 1A(2) of the Criminal Law Act 1977, which currently applies only to agreements to pursue a course of conduct that would involve an act or event intended to take place in a country or territory outside the United Kingdom. This condition will now be satisfied where the act or event is intended to take place outside England and Wales and therefore will include acts or events in Scotland or Northern Ireland.
409. The section also substitutes three new subsections for section 1A(14) of the Criminal Law Act 1977. These ensure that the changes made by section 72 do not have retrospective effect. Any agreement entered into during the period beginning on 4 September 1998 and ending with the date that section 72(1) comes into force will be subject to the current wording of section 1A(2).
410. *Subsection (2)* makes equivalent changes for Northern Ireland.

### ***Section 73: Abolition of common law libel offences etc***

411. **Section 73** abolishes the common law offences of seditious libel, defamatory libel and obscene libel in England and Wales and Northern Ireland.