



# Criminal Justice (Terrorism and Conspiracy) Act 1998

## 1998 CHAPTER 40

### *Proscribed organisations*

#### **1 Evidence and inferences: Great Britain**

- (1) The following sections shall be inserted after section 2 of the Prevention of Terrorism (Temporary Provisions) Act 1989—

##### **“2A Evidence and inferences**

- (1) This section applies where a person is charged with an offence under section 2(1)(a) above; and references here to a specified organisation must be construed in accordance with section 2B below.
- (2) Subsection (3) below applies if a police officer of or above the rank of superintendent states in oral evidence that in his opinion the accused—
- (a) belongs to an organisation which is specified, or
  - (b) belonged at a particular time to an organisation which was then specified.
- (3) If this subsection applies—
- (a) the statement shall be admissible as evidence of the matter stated, but
  - (b) the accused shall not be committed for trial in England and Wales, or be found to have a case to answer or be convicted, solely on the basis of the statement.
- (4) Subsection (6) below applies if evidence is given that—
- (a) at any time before being charged with the offence the accused, on being questioned under caution by a constable, failed to mention a fact which is material to the offence and which he could reasonably be expected to mention, and
  - (b) before being questioned he was permitted to consult a solicitor.

- (5) Subsection (6) below also applies if evidence is given that—
- (a) on being charged with the offence or informed by a constable that he might be prosecuted for it the accused failed to mention a fact which is material to the offence and which he could reasonably be expected to mention, and
  - (b) before being charged or informed he was permitted to consult a solicitor.
- (6) If this subsection applies—
- (a) the court or jury, in considering any question whether the accused belongs or belonged at a particular time to a specified organisation, may draw from the failure inferences relating to that question, but
  - (b) the accused shall not be committed for trial in England and Wales, or be found to have a case to answer or be convicted, solely on the basis of the inferences.
- (7) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.
- (8) This section does not—
- (a) prejudice the admissibility of evidence admissible apart from this section;
  - (b) preclude the drawing of inferences which could be drawn apart from this section;
  - (c) prejudice an enactment providing (in whatever words) that an answer or evidence given by a person in specified circumstances is not admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).
- (9) In subsection (8)(c) above the reference to giving evidence is a reference to giving it in any manner (whether by giving information, making discovery or disclosure, producing documents or otherwise).
- (10) In any proceedings in Scotland for an offence under section 2(1)(a) above in which the accused is charged with belonging to a specified organisation, where the court or jury draws an inference as mentioned in subsection (6) above any evidence that he belongs or, as the case may be, belonged to the organisation shall be sufficient evidence of that matter.
- (11) In this section “police officer” means a member of—
- (a) a police force within the meaning of the Police Act 1996 or the Police (Scotland) Act 1967, or
  - (b) the Royal Ulster Constabulary.
- (12) This section does not apply to a statement made or failure occurring before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed.

## **2B Specified organisations**

- (1) For the purposes of section 2A above an organisation is specified at a particular time if at that time—
    - (a) it is specified under section 3(8) of the Northern Ireland (Sentences) Act 1998 or under subsection (2) below, and
    - (b) it is, or forms part of, an organisation which is proscribed for the purposes of this Act.
  - (2) If the condition in subsection (3) below is satisfied the Secretary of State may by order specify an organisation which is not specified under section 3(8) of the Northern Ireland (Sentences) Act 1998.
  - (3) The condition is that the Secretary of State believes that the organisation—
    - (a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
    - (b) has not established or is not maintaining a complete and unequivocal ceasefire.
  - (4) An order under this section shall be made by statutory instrument; and no order shall be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.”
- (2) For the purposes of section 27 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (duration etc) sections 2A and 2B of that Act shall be treated as having been continued in force by the order under subsection (6) of section 27 which has effect when this Act is passed.

## **2 Evidence and inferences: Northern Ireland**

The following sections shall be inserted after section 30 of the Northern Ireland (Emergency Provisions) Act 1996 —

### **“30A Evidence and inferences**

- (1) This section applies where a person is charged with an offence under section 30(1)(a); and references here to a specified organisation must be construed in accordance with section 30B.
- (2) Subsection (3) applies if a police officer of or above the rank of superintendent states in oral evidence that in his opinion the accused—
  - (a) belongs to an organisation which is specified, or
  - (b) belonged at a particular time to an organisation which was then specified.
- (3) If this subsection applies—
  - (a) the statement shall be admissible as evidence of the matter stated, but
  - (b) the accused shall not be committed for trial or be found to have a case to answer or be convicted solely on the basis of the statement.
- (4) Subsection (6) applies if evidence is given that—

- (a) at any time before being charged with the offence the accused, on being questioned under caution by a constable, failed to mention a fact which is material to the offence and which he could reasonably be expected to mention, and
  - (b) before being questioned he was permitted to consult a solicitor.
- (5) Subsection (6) also applies if evidence is given that—
  - (a) on being charged with the offence or informed by a constable that he might be prosecuted for it the accused failed to mention a fact which is material to the offence and which he could reasonably be expected to mention, and
  - (b) before being charged or informed he was permitted to consult a solicitor.
- (6) If this subsection applies—
  - (a) the court, in considering any question whether the accused belongs or belonged at a particular time to a specified organisation, may draw from the failure inferences relating to that question, but
  - (b) the accused shall not be committed for trial or be found to have a case to answer or be convicted solely on the basis of the inferences.
- (7) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.
- (8) This section does not—
  - (a) prejudice the admissibility of evidence admissible apart from this section;
  - (b) preclude the drawing of inferences which could be drawn apart from this section;
  - (c) prejudice an enactment providing (in whatever words) that an answer or evidence given by a person in specified circumstances is not admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).
- (9) In subsection (8)(c) the reference to giving evidence is a reference to giving it in any manner (whether by giving information, making discovery, producing documents or otherwise).
- (10) In this section “police officer” means a member of—
  - (a) a police force within the meaning of the Police Act 1996 or the Police (Scotland) Act 1967, or
  - (b) the Royal Ulster Constabulary.
- (11) This section does not apply to a statement made or failure occurring before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed.

### **30B Specified organisations**

- (1) For the purposes of section 30A an organisation is specified at a particular time if at that time—

- (a) it is specified under section 3(8) of the Northern Ireland (Sentences) Act 1998 or under subsection (2) below, and
  - (b) it is, or forms part of, an organisation which is proscribed for the purposes of this Act.
- (2) If the condition in subsection (3) is satisfied the Secretary of State may by order specify an organisation which is not specified under section 3(8) of the Northern Ireland (Sentences) Act 1998.
- (3) The condition is that the Secretary of State believes that the organisation—
- (a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
  - (b) has not established or is not maintaining a complete and unequivocal ceasefire.
- (4) An order under this section shall be made by statutory instrument; and no order shall be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.”

### **3 Arrest and detention**

- (1) In section 14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (arrest and detention of persons suspected of certain offences etc) after “above” there shall be inserted “or under section 30 of the Northern Ireland (Emergency Provisions) Act 1996”.
- (2) This section applies whether the offence is suspected to have been committed before or on or after the day on which this Act is passed.

### **4 Forfeiture orders**

- (1) This section applies if—
- (a) a person is convicted of an offence under section 2 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (membership etc of proscribed organisations), and
  - (b) at the time of the offence he belonged to an organisation which was then a specified organisation for the purposes of section 2A of that Act.
- (2) This section also applies if—
- (a) a person is convicted of an offence under section 30 of the Northern Ireland (Emergency Provisions) Act 1996 (membership etc of proscribed organisations), and
  - (b) at the time of the offence he belonged to an organisation which was then a specified organisation for the purposes of section 30A of that Act.
- (3) The court by or before which the person is convicted may order the forfeiture of any money or other property if—
- (a) he had it in his possession or under his control at the time of the offence, and
  - (b) it has been used in furtherance of or in connection with the activities of the specified organisation, or the court believes it may be so used unless forfeited.
- (4) If a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, before

making such an order in respect of it the court must give him an opportunity to be heard.

- (5) The standard of proof required to determine any question arising as to whether subsection (1)(b), (2)(b) or (3)(a) or (b) is satisfied shall be that applicable in civil proceedings.
- (6) For the purposes of this section property includes property wherever situated and whether real or personal, heritable or moveable, a thing in action or other intangible or incorporeal property.
- (7) Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 shall apply in relation to orders under subsection (3) above, and in its application by virtue of this subsection—
  - (a) the references in paragraphs 1(1), 11(1) and 21(1) to section 13(2), (3) or (4) of that Act shall be treated as references to subsection (3) above;
  - (b) the references in paragraphs 1(1)(d), 11(1)(d) and 21(1)(d) to section 13(6) of that Act shall be treated as references to subsection (4) above.
- (8) This section applies where the offence is committed on or after the day on which this Act is passed, and for this purpose an offence committed over a period of more than one day or at some time during a period of more than one day must be taken to be committed on the last of the days in the period.
- (9) The following paragraphs apply so far as this section extends to England and Wales and Scotland—
  - (a) section 27(5) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (duration) shall apply to this section;
  - (b) for the purposes of section 27 this section shall be treated as having been continued in force by the order under subsection (6) of section 27 which has effect when this Act is passed.
- (10) So far as this section extends to Northern Ireland, for the purposes of section 62 of the Northern Ireland (Emergency Provisions) Act 1996 (duration etc) it shall be treated as a temporary provision of that Act.

*Conspiracy to commit offences outside the United Kingdom*

## 5 England and Wales

- (1) The following section shall be inserted after section 1 of the Criminal Law Act 1977 (conspiracy)—

**“1A Conspiracy to commit offences outside the United Kingdom**

- (1) Where each of the following conditions is satisfied in the case of an agreement, this Part of this Act has effect in relation to the agreement as it has effect in relation to an agreement falling within section 1(1) above.
- (2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve—
  - (a) an act by one or more of the parties, or
  - (b) the happening of some other event,

intended to take place in a country or territory outside the United Kingdom.

- (3) The second condition is that that act or other event constitutes an offence under the law in force in that country or territory.
- (4) The third condition is that the agreement would fall within section 1(1) above as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in England and Wales if committed in accordance with the parties' intentions.
- (5) The fourth condition is that—
  - (a) a party to the agreement, or a party's agent, did anything in England and Wales in relation to the agreement before its formation, or
  - (b) a party to the agreement became a party in England and Wales (by joining it either in person or through an agent), or
  - (c) a party to the agreement, or a party's agent, did or omitted anything in England and Wales in pursuance of the agreement.
- (6) In the application of this Part of this Act to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in England and Wales.
- (7) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of this section, however it is described in that law.
- (8) Subject to subsection (9) below, the second condition is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice—
  - (a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied,
  - (b) showing their grounds for that opinion, and
  - (c) requiring the prosecution to show that it is satisfied.
- (9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8) above.
- (10) In the Crown Court the question whether the second condition is satisfied shall be decided by the judge alone, and shall be treated as a question of law for the purposes of—
  - (a) section 9(3) of the Criminal Justice Act 1987 (preparatory hearing in fraud cases), and
  - (b) section 31(3) of the Criminal Procedure and Investigations Act 1996 (preparatory hearing in other cases).
- (11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in England and Wales if the message is sent or received in England and Wales.
- (12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.

- (13) References in any enactment, instrument or document (except those in this Part of this Act) to an offence of conspiracy to commit an offence include an offence triable in England and Wales as such a conspiracy by virtue of this section (without prejudice to subsection (6) above).
- (14) Nothing in this section—
- (a) applies to an agreement entered into before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed, or
  - (b) imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.”
- (2) At the end of section 4 of that Act (restrictions on the institution of proceedings) there shall be added—
- “(5) Subject to subsection (6) below, no proceedings for an offence triable by virtue of section 1A above may be instituted except by or with the consent of the Attorney General.
  - (6) The Secretary of State may by order provide that subsection (5) above shall not apply, or shall not apply to any case of a description specified in the order.
  - (7) An order under subsection (6) above—
    - (a) shall be made by statutory instrument, and
    - (b) shall not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.”

## 6 Northern Ireland

- (1) The provision set out in section 5(1) shall be inserted after Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (conspiracy) as Article 9A, with the following modifications—
- (a) for “this Part of this Act” substitute “this Part”;
  - (b) for “section 1(1) above” substitute “Article 9(1)”;
  - (c) for “England and Wales” substitute “Northern Ireland”;
  - (d) for “subsection (9) below” substitute “paragraph (9)”;
  - (e) for “subsection (8) above” substitute “paragraph (8)”;
  - (f) for “section 9(3) of the Criminal Justice Act 1987” substitute “Article 8(3) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988”;
  - (g) for “this section” substitute “this article”; and
  - (h) for “subsection (6) above” substitute “paragraph (6)”.
- (2) At the end of Article 12 of that Order (restrictions on the institution of proceedings) there shall be added—
- “(5) Subject to paragraph (6), no proceedings for an offence triable by virtue of Article 9 above may be instituted except by or with the consent of the Attorney General for Northern Ireland.
  - (6) The Secretary of State may by order provide that paragraph (5) shall not apply, or shall not apply to any case of a description specified in the order.
  - (7) No order shall be made under paragraph (6) unless a draft has been laid before, and approved by resolution of, each House of Parliament.”



## 7 Scotland

- (1) The following section shall be inserted after section 11 of the Criminal Procedure (Scotland) Act 1995 (certain offences committed outside Scotland)—

### **“11A Conspiracy to commit offences outside the United Kingdom**

- (1) This section applies to any act done by a person in Scotland which would amount to conspiracy to commit an offence but for the fact that the criminal purpose is intended to occur in a country or territory outside the United Kingdom.
- (2) Where a person does an act to which this section applies, the criminal purpose shall be treated as the offence mentioned in subsection (1) above and he shall, accordingly, be guilty of conspiracy to commit the offence.
- (3) A person is guilty of an offence by virtue of this section only if the criminal purpose would involve at some stage—
- (a) an act by him or another party to the conspiracy; or
  - (b) the happening of some other event,
- constituting an offence under the law in force in the country or territory where the act or other event was intended to take place; and conduct punishable under the law in force in the country or territory is an offence under that law for the purposes of this section however it is described in that law.
- (4) Subject to subsection (6) below, a condition specified in subsection (3) above shall be taken to be satisfied unless, not later than such time as High Court may, by Act of Adjournal, prescribe, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in his opinion satisfied;
  - (b) setting out the grounds for his opinion; and
  - (c) requiring the prosecutor to prove that the condition is satisfied.
- (5) In subsection (4) above “the relevant conduct” means the agreement to effect the criminal purpose.
- (6) The court may permit the accused to require the prosecutor to prove that the condition mentioned in subsection (4) above is satisfied without the prior service of a notice under that subsection.
- (7) In proceedings on indictment, the question whether a condition is satisfied shall be determined by the judge alone.
- (8) Nothing in this section—
- (a) applies to an act done before the day on which the Criminal Justice (Terrorism and Conspiracy) Act 1998 was passed, or
  - (b) imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.”

### *General*

#### **8 Report to Parliament**

The Secretary of State shall lay before both Houses of Parliament at least once in every 12 months a report on the working of this Act.

#### **9 Consequential amendments and repeals**

- (1) Schedule 1 (consequential amendments) shall have effect.
- (2) The enactments specified in Schedule 2 are hereby repealed or revoked to the extent specified.
- (3) The amendments in Part II of Schedule 1, and the repeals and revocations in Part II of Schedule 2, shall have no effect—
  - (a) in England and Wales and Northern Ireland, in relation to an agreement entered into before the day on which this Act is passed, or
  - (b) in Scotland, in relation to an act done before the day on which this Act is passed.

#### **10 Extent**

A provision of this Act which amends, repeals or revokes an enactment shall have the same extent as the enactment which it amends, repeals or revokes.

#### **11 Short title**

This Act may be cited as the Criminal Justice (Terrorism and Conspiracy) Act 1998.