

## **FRAUD ACT 2006**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 6: Possession etc. of articles for use in frauds***

25. **Section 6** makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 and section 24 of the Theft Act (Northern Ireland) 1969. (These provisions make it an offence for a person to “go equipped” to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode.) The intention is to attract the case law on section 25, which has established that proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice. In *R v Ellames* 60 Cr. App. R. 7 (CA), the court said that:

“In our view, to establish an offence under s 25(1) the prosecution must prove that the defendant was in possession of the article, and intended the article to be used in the course of or in connection with some future burglary, theft or cheat. But it is not necessary to prove that he intended it to be used in the course of or in connection with any specific burglary, theft or cheat; it is enough to prove a general intention to use it for some burglary, theft or cheat; we think that this view is supported by the use of the word ‘any’ in s 25(1). Nor, in our view, is it necessary to prove that the defendant intended to use it himself; it will be enough to prove that he had it with him with the intention that it should be used by someone else.

26. **Subsection (2)** provides that the maximum custodial sentence for this new offence is 5 years.