



Criminal Justice Act 1988

1988 CHAPTER 33

PART XI

MISCELLANEOUS

Torture

134 Torture

- (1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.
- (2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—
 - (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—
 - (i) of a public official; or
 - (ii) of a person acting in an official capacity; and
 - (b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.
- (3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.
- (4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.
- (5) For the purposes of this section “lawful authority, justification or excuse” means—

Status: This is the original version (as it was originally enacted).

- (a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;
 - (b) in relation to pain or suffering inflicted outside the United Kingdom—
 - (i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;
 - (ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and
 - (iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.
- (6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

135 Requirement of Attorney General’s consent for prosecutions

Proceedings for an offence under section 134 above shall not be begun—

- (a) in England and Wales, except by, or with the consent of, the Attorney General; or
- (b) in Northern Ireland, except by, or with the consent of, the Attorney General for Northern Ireland.

136 Extradition under 1870 Act

- (1) Torture shall be deemed to be included in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870.
- (2) For the purposes of the Extradition Act 1870 any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State in the case of which the Extradition Act 1870 has been applied by an Order in Council under section 2 of that Act shall be deemed to be an offence committed within the jurisdiction of that State.

137 Extradition under Part I

- (1) Where—
 - (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Torture Convention; and
 - (b) general extradition arrangements have not been made with that State under Part I of this Act,

Her Majesty may by Order in Council direct that the provisions of this Act specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Torture Convention constituted general extradition arrangements made with that State under Part I of this Act, but only in respect of the following offences—

- (i) torture;

- (ii) attempted torture;
 - (iii) counselling, procuring, commanding, aiding or abetting torture; and
 - (iv) being accessory before or after the fact to torture.
- (2) The provisions of this Act mentioned in subsection (1) above are—
- (a) section 1(1) to (8);
 - (b) sections 3 to 10; and
 - (c) sections 12 to 18.
- (3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.
- (4) For the purposes of the provisions of this Act specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which constitutes—
- (a) an offence mentioned in subsection (1) above; and
 - (b) an offence against the law of that State,
- shall be deemed to be an offence committed within the territory of that State.
- (5) In this section “the Torture Convention” means the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December 1984.

138 Application to Channel Islands, Isle of Man and colonies

- (1) Her Majesty may by Order in Council make provision for extending sections 134 and 135 above, with such modifications and exceptions as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.
- (2) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 136 above.
- (3) Sections 19 and 20 above shall extend to section 137 above.