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*Status: Point in time view as at 01/01/2006.*

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## STATUTORY INSTRUMENTS

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# 1983 No. 1120 (N.I. 13)

## The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

- - - - - 27th July 1983

### PART I INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F1</sup> shall apply to Article I and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “statutory provision” has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954.

**F1** 1954 c. 33 (N.I.).

### PART II ATTEMPTS

#### **Attempting to commit an offence**

3.—(1) If, with intent to commit an offence to which this Article applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.

[<sup>F2</sup>(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this paragraph applies to an act, what the person doing it had in view shall be treated as an offence to which this Article applies.

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(1B) Paragraph (1A) above applies to an act if—

- (a) it is done in Northern Ireland; and
- (b) it would fall within paragraph (1) as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in Northern Ireland.]

(2) A person may be guilty of attempting to commit an offence to which this Article applies even though the facts are such that the commission of the offence is impossible.

(3) In any case where—

- (a) apart from this paragraph a person's intention would not be regarded as having amounted to an intent to commit an offence; but
- (b) if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of paragraph (1), he shall be regarded as having had an intent to commit that offence.

(4) This Article applies to any offence which, if it were completed, would be triable in Northern Ireland, other than—

- (a) conspiracy (at common law or under Article 9 or any other statutory provision);
- (b) aiding, abetting, counselling, procuring or suborning the commission of an offence;
- (c) an offence under section 4 (1) (assisting offenders) of the Criminal Law Act (Northern Ireland) 1967<sup>F3</sup>;
- (d) an offence under Article 8.

**F2** 1990 c.18

**F3** 1967 c. 18 (N.I.).

#### [<sup>F4</sup>Extended jurisdiction in relation to certain attempts

**3A.**—(1) If this Article applies to an act, what the person doing the act had in view shall be treated as an offence to which Article 3(1) applies.

(2) This Article applies to an act if—

- (a) it is done in Northern Ireland, and
- (b) it would fall within Article 3(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in Northern Ireland.

(3) In this Article “Group A offence” has the same meaning as in Part III of the Criminal Justice (Northern Ireland) Order 1996.

(4) Paragraph (1) is subject to the provisions of Article 43 of the Order of 1996 (relevance of external law).

(5) Where a person does any act to which this Article applies, the offence which he commits shall for all purposes be treated as the offence of attempting to commit the relevant Group A offence.]

**F4** 1996 NI 24

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### Application of procedural and other provisions to offences under Article 3

4.—(1) Any provision to which this Article applies shall have effect with respect to an offence under Article 3 of attempting to commit an offence as it has effect with respect to the offence attempted.

(2) This Article applies to provisions of any of the following descriptions made by or under any statutory provision—

- (a) provisions whereby proceedings may not be instituted or carried on otherwise than by, or on behalf or with the consent of, any person (including any provisions which also make other exceptions to the prohibition);
- (b) provisions conferring power to institute proceedings;
- (c) provisions as to the venue of proceedings;
- (d) provisions whereby proceedings may not be instituted after the expiration of a time limit;
- (e) provisions conferring a power of arrest or search;
- (f) provisions conferring a power of seizure and detention of property;
- (g) provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than two credible witnesses);
- (h) provisions conferring a power of forfeiture, including any power to deal with anything liable to be forfeited;
- (i) provisions whereby, if an offence committed by a body corporate is proved to have been committed with the consent or connivance of another person, that person also is guilty of the offence.

### Trial and penalties

5.—(1) A person guilty by virtue of Article 3 of attempting to commit an offence shall—

- (a) if the offence attempted is murder or any other offence the sentence for which is fixed by law, be liable on conviction on indictment to imprisonment for life; and
- (b) if the offence attempted is indictable but does not fall within sub-paragraph (a), be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence; and
- (c) if the offence attempted is punishable either on conviction on indictment or on summary conviction, be liable on summary conviction to any penalty to which he would have been liable on summary conviction of that offence; and
- (d) if the offence attempted is punishable only on summary conviction, be liable on summary conviction to any penalty to which he would have been liable on conviction of that offence.

(2) Where, in proceedings against a person for an offence under Article 3, there is evidence sufficient in law to support a finding that he did an act falling within paragraph (1) of that Article, the question whether or not his act fell within that paragraph is a question of fact.

(3) Nothing in paragraph (1) affects the operation of—

*Sub#para. (a) rep. by 2003 NI 13*

- (b) section 4 of the Criminal Law Amendment Act 1885<sup>F5</sup> (maximum penalty of two years' imprisonment for attempted unlawful carnal knowledge of a girl under fourteen);
- (c) section 1 (3) of the Punishment of Incest Act 1908<sup>F6</sup> (maximum penalty of two years' imprisonment for attempted incest by a male);

*Sub#para.(d) rep. by 1989 NI 15*

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**F5** 1885 c. 69.

**F6** 1908 c. 45.

### Effect of Part II on common law and other statutory provisions

6.—(1) The offence of attempt at common law and any offence at common law of procuring materials for crime are hereby abolished for all purposes not relating to acts done before the coming into operation of this Order.

(2) Except as regards offences committed before the coming into operation of this Order, references in any statutory provision which fall to be construed as references to the offence of attempt at common law shall be construed as references to the offence under Article 3.

(3) In the Misuse of Drugs Act 1971<sup>F7</sup>

(a) in section 12 (1) (a) the reference to an offence under that Act includes a reference to an offence under Article 3 of attempting to commit such an offence;

(b) in section 19 for the words from “to attempt” to the end there shall be substituted the words “to incite another to commit an offence under any other provision of this Act”.

(4) Nothing in Article 3 (4) affects the operation of section 6 of the Criminal Jurisdiction Act 1975<sup>F8</sup>.

**F7** 1971 c. 38.

**F8** 1975 c. 59.

## PART III

### SUSPECTED PERSONS

#### Abolition of offence of loitering, etc. with intent

7. —In section 4 of the Vagrancy Act 1824<sup>F9</sup> paragraph (k) (offence of suspected person or reputed thief frequenting or loitering about certain places with intent to commit arrestable offence) shall cease to have effect.

**F9** 1824 c. 83.

#### Interference with vehicles

8.—(1) A person is guilty of the offence of vehicle interference if he interferes with a motor vehicle or trailer or with anything carried in or on a motor vehicle or trailer with the intention that an offence specified in paragraph (2) shall be committed by himself or some other person.

(2) The offences mentioned in paragraph (1) are—

(a) theft of the motor vehicle or trailer or part of it;

(b) theft of anything carried in or on the motor vehicle or trailer; and

(c) an offence under Article 172 of the Road Traffic (Northern Ireland) Order 1981<sup>F10</sup> (taking or driving away without consent);

and, if it is shown that a person accused of an offence under this Article intended that one of those offences should be committed, it is immaterial that it cannot be shown which it was.

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(3) A person guilty of an offence under this Article shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £500 or to both.

*Para. (4) rep. by 1989 NI 12*

(5) In this Article “motor vehicle” and “trailer” have the meanings assigned to them by Article 2 (2) of the Road Traffic (Northern Ireland) Order 1981.

**F10** 1981 NI 1

## PART IV CONSPIRACY

### The offence of conspiracy

**9.**—(1) Subject to the following provisions of this Part, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—

- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
- (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

*Paras. (1A),(1B) rep. by 1998 c.40*

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstances necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of paragraph (1) unless he and at least one other party to the agreement intend or know that the fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

*Para. (3) rep. by 1995 NI 12*

(4) In this Part “offence” means an offence triable in Northern Ireland<sup>F11</sup>. . .

*Paras. (5),(6) rep. by 1998 c.40*

**F11** 1998 c.40

### [<sup>F12</sup>Conspiracy to commit offences outside the United Kingdom

**9A.**—(1) Where each of the following conditions is satisfied in the case of an agreement, this Part has effect in relation to the agreement as it has effect in relation to an agreement falling within Article 9(1).

(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.

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(4) The third condition is that the agreement would fall within Article 9(1) as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in Northern Ireland 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 Northern Ireland in relation to the agreement before its formation, or
- (b) a party to the agreement became a party in Northern Ireland (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 Northern Ireland in pursuance of the agreement.

(6) In the application of this Part 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 Northern Ireland.

(7) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of this article, however it is described in that law.

(8) Subject to paragraph (9), 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 paragraph (8).

(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) Article 8(3) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (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 Northern Ireland if the message is sent or received in Northern Ireland.

(12) In any proceedings in respect of an offence triable by virtue of this article, 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) to an offence of conspiracy to commit an offence include an offence triable in Northern Ireland as such a conspiracy by virtue of this article (without prejudice to paragraph (6)).

(14) Nothing in this article—

- (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.]

## Exemptions from liability for conspiracy

10.—(1) A person shall not by virtue of Article 9 be guilty of conspiracy to commit any offence if he is an intended victim of that offence.

(2) A person shall not by virtue of Article 9 be guilty of conspiracy to commit any offence or offences if the only other person or persons with whom he agrees are (both initially and at all times during the currency of the agreement) persons of any one or more of the following descriptions, that is to say—

- (a) his spouse<sup>[F13]</sup> or civil partner];
- (b) a person under the age of criminal responsibility; and
- (c) an intended victim of that offence or of each of those offences.

(3) A person is under the age of criminal responsibility for the purposes of paragraph (2) (b) so long as it is conclusively presumed, by virtue of<sup>[F14]</sup> Article 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998], that he cannot be guilty of any offence.

F13 2004 c. 33

F14 1998 NI 9

## Penalties for conspiracy

11.—(1) A person guilty by virtue of Article 9 of conspiracy to commit any offence or offences shall be liable on conviction on indictment—

- (a) in a case falling within paragraph (2) or (3), to imprisonment for a term related in accordance with that paragraph to the gravity of the offence or offences in question (referred to in paragraphs (2) and (3) as the relevant offence or offences); and
- (b) in any other case, to a fine.

Sub-paragraph (b) shall not be taken as prejudicing the application of section 7 (3) of the Criminal Law Act (Northern Ireland) 1967 (general power of court to fine offender convicted on indictment) in a case falling within paragraph (2) or (3).

(2) Where the relevant offence or any of the relevant offences is an offence of any of the following descriptions, that is to say—

- (a) murder, or any other offence the sentence for which is fixed by law;
- (b) an offence for which a sentence extending to imprisonment for life is provided; or
- (c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided.

the person convicted shall be liable to imprisonment for life.

(3) Where in a case other than one to which paragraph (2) applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this Article where the terms provided differ).

In the case of an offence punishable either on conviction on indictment or on summary conviction, the references above in this paragraph to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

(4) A person guilty by virtue of Article 9 of conspiracy to commit any offence or offences punishable on summary conviction (whether or not also punishable on conviction on indictment) shall be liable on summary conviction to any penalty to which he would have been liable on summary

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conviction of that offence or (where more than one offence is in question) for any one of those offences (taking the greater or the greatest penalty as the limit for the purposes of this Article where the penalties provided differ).

### **Restrictions on the institution of proceedings for conspiracy**

**12.**—(1) Subject to paragraph (2), proceedings under Article 9 for conspiracy to commit any offence or offences shall not be instituted against any person except by or with the consent of the Director of Public Prosecutions for Northern Ireland if the offence or (as the case may be) each of the offences in question is an offence punishable only on summary conviction.

(2) In relation to the institution of proceedings under Article 9 for conspiracy to commit—

- (a) an offence which is subject to a prohibition by or under any statutory provision on the institution of proceedings otherwise than by, or on behalf or with the consent of, the Attorney General for Northern Ireland, or
- (b) two or more offences of which at least one is subject to such a prohibition,

paragraph (1) shall have effect with the substitution of a reference to the Attorney General for Northern Ireland for the reference to the Director of Public Prosecutions for Northern Ireland.

(3) Any prohibition by or under any statutory provision on the institution of proceedings for any offence which is not an offence punishable only on summary conviction otherwise than by, or on behalf or with the consent of, the Director of Public Prosecutions for Northern Ireland or any other person shall apply also in relation to proceedings under Article 9 for conspiracy to commit that offence.

(4) Where—

- (a) an offence has been committed in pursuance of any agreement; and
- (b) proceedings may not be instituted for that offence because any time limit applicable to the institution of any such proceedings has expired,

proceedings under Article 9 for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.

<sup>[F15]</sup>(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.]

**F15** 1998 c.40

### **Abolitions, savings, transitional provisions and amendments**

**13.**—(1) Subject to the following provisions of this Article, the offence of conspiracy at common law is hereby abolished.

(2) Paragraph (1) shall not affect the offence of conspiracy at common law so far as relates to conspiracy to defraud<sup>F16</sup>. . . .

(3) Paragraph (1) shall not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which—

- (a) tends to corrupt public morals or outrages public decency; but



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- (b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.
- (4) Paragraph (1) shall not affect—
- (a) any proceedings commenced before the time when this Order comes into operation;
- (b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time.
- (5) References in any statutory provision which fall to be construed as references to the offence of conspiracy at common law shall, in so far as they relate to an offence abolished by paragraph (1), be construed as references to the offence under Article 9.
- (6) Articles 9 and 10 shall apply to things done before as well as to things done after the time when this Order comes into operation.
- (7) The rules laid down by Articles 9 and 10 shall apply for determining whether a person is guilty of an offence of conspiracy under any statutory provision other than Article 9 but conduct which is an offence under any such other statutory provision shall not also be an offence under Article 9.
- (8) Incitement to commit the offence of conspiracy (whether the conspiracy incited would be an offence at common law or under Article 9 or any other statutory provision) shall cease to be an offence.
- (9) The fact that the person or persons who, so far as appears from the indictment or complaint on which any person has been convicted of conspiracy, was or were the only other party or parties to the agreement on which his conviction was based has or have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) shall not be a ground for quashing his conviction unless under all the circumstances of the case his conviction is inconsistent with the acquittal of the other person or persons in question.
- (10) Any rule of law or practice inconsistent with the provisions of paragraph (9) is hereby abolished.
- (11) Nothing in Article 9 (4) affects the operation of section 6 of the Criminal Jurisdiction Act 1975.
- (12) The following statutory provisions shall cease to have effect, namely—
- (a) in section 4 of the Offences against the Person Act 1861 the words preceding “whosoever”;
- and
- Sub#para. (b) rep. by 1995 NI 12*

**F16** 1988 NI 16

*Part V (Art. 14)—Repeals*

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## *Schedule—Repeals*

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