

69.—Each provision of the Explosives Act 1875 specified in *Schedule 2* to the *Criminal Justice Act 2006* is amended in the manner specified in the third and fourth columns opposite the mention of that provision in the first column of that Schedule. Other amendments of Explosives Act 1875.

PART 7

ORGANISED CRIME

70.—(1) In this Part—

Interpretation (*Part 7*).

“act” includes omission and a reference to the commission or doing of an act includes a reference to the making of an omission;

“criminal organisation” means a structured group, however organised, that—

- (a) is composed of 3 or more persons acting in concert,
- (b) is established over a period of time,
- (c) has as its main purpose or main activity the commission or facilitation of one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit;

“Irish ship” has the meaning it has in section 9 of the *Mercantile Marine Act 1955*;

“serious offence” means an offence for which a person may be punished by imprisonment for a term of 4 years or more;

“structured group” means a group that—

- (a) is not randomly formed for the immediate commission of a single offence, and
- (b) does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(2) For the purposes of this section facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.

71.—(1) Subject to *subsections (2) and (3)*, a person who conspires, whether in the State or elsewhere, with one or more persons to do an act— Offence of conspiracy.

- (a) in the State that constitutes a serious offence, or
- (b) in a place outside the State that constitutes a serious offence under the law of that place and which would, if done in the State, constitute a serious offence,

is guilty of an offence irrespective of whether such act actually takes place or not.

(2) *Subsection (1)* applies to a conspiracy committed outside the State if—

- (a) the offence, the subject of the conspiracy, was committed, or was intended to be committed, in the State or against a citizen of Ireland,
- (b) the conspiracy is committed on board an Irish ship,
- (c) the conspiracy is committed on an aircraft registered in the State, or
- (d) the conspiracy is committed by an Irish citizen or a stateless person habitually resident in the State.

(3) *Subsection (1)* shall also apply to a conspiracy committed outside the State in circumstances other than those referred to in *subsection (2)*, but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings for an offence under *subsection (1)* except in accordance with *section 74(3)*.

(4) A person charged with an offence under this section is liable to be indicted, tried and punished as a principal offender.

(5) A stateless person who has his or her principal residence in the State for the 12 months immediately preceding the commission of a conspiracy is, for the purposes of *subsection (2)*, considered to be habitually resident in the State on the date of the commission of the conspiracy.

Organised crime.

72.—(1) A person who, for the purpose of enhancing the ability of a criminal organisation to commit or facilitate—

- (a) a serious offence in the State, or
- (b) in a place outside the State, a serious offence under the law of that place where the act constituting the offence would, if done in the State, constitute a serious offence,

knowingly, by act—

- (i) in a case to which *paragraph (a)* applies, whether done in or outside the State, and
- (ii) in a case to which *paragraph (b)* applies, done in the State, on board an Irish ship or on an aircraft registered in the State,

participates in or contributes to any activity of the organisation is guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall not be necessary for the prosecution to prove that—

- (a) the criminal organisation concerned actually committed a serious offence in the State or a serious offence under the law of a place outside the State where the act constituting the offence would, if done in the State, constitute a serious offence, as the case may be,
- (b) the participation or contribution of the person concerned actually enhanced the ability of the criminal organisation concerned to commit or facilitate the offence concerned, or

- (c) the person concerned knew the specific nature of any offence that may have been committed or facilitated by the criminal organisation concerned.

(3) In determining whether a person participates in or contributes to any activity of a criminal organisation, the court may consider, *inter alia*, whether the person—

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the organisation, or

- (b) receives any benefit from the organisation.

(4) For the purposes of this section, facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.

(5) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

73.—(1) A person who commits a serious offence for the benefit of, at the direction of, or in association with, a criminal organisation is guilty of an offence.

Commission of offence for criminal organisation.

(2) In proceedings for an offence under *subsection (1)*, it shall not be necessary for the prosecution to prove that the person concerned knew any of the persons who constitute the criminal organisation concerned.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

74.—(1) Proceedings for an offence under *section 71* or *72* in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Proceedings relating to offences committed outside State.

(2) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

(3) The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for an offence in respect of an act to which *subsection (1)* of *section 71* applies and that is committed outside the State in the circumstances referred to in *subsection (3)* of that section if satisfied—

- (a) that—

- (i) a request for a person's surrender for the purpose of trying him or her for an offence in respect of that act has been made under Part II of the Extradition Act 1965 by any country, and

- (ii) the request has been finally refused (whether as a result of a decision of the court or otherwise),

or

(b) that—

- (i) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of that act, and
- (ii) a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned,

or

- (c) that, because of the special circumstances (including, but not limited to, the likelihood of a refusal referred to in *paragraph (a)(ii)* or a determination referred to in *paragraph (b)(ii)*), it is expedient that proceedings be taken against the person for an offence under the law of the State in respect of the act.

(4) In this section “European arrest warrant” and “issuing state” have the meanings they have in section 2(1) of the European Arrest Warrant Act 2003.

Evidence in proceedings under this Part.

75.—(1) In any proceedings for an offence under *section 71*—

- (a) a certificate that is signed by an officer of the Department of Foreign Affairs and states that—

- (i) a passport was issued by that Department of State to a person on a specified date, and

- (ii) to the best of the officer’s knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown, and

- (b) a certificate that is signed by the Director of Public Prosecutions or by a person authorised by him or her and that states that any of the matters specified in *paragraph (a)*, *(b)* or *(c)* of *section 74(3)* is evidence of the facts stated in the certificate, unless the contrary is shown.

(2) A document purporting to be a certificate under *subsection (1)* is deemed, unless the contrary is shown—

- (a) to be such a certificate,

- (b) to have been signed by the person purporting to have signed it, and

- (c) in the case of a certificate signed with the authority of the Minister for Foreign Affairs or the Director of Public Prosecutions, to have been signed in accordance with the authorisation.

76.—(1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or any other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Liability for offences by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

77.—A person who is acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under—

Double jeopardy.

(a) *section 71* consisting of the act, or the conspiracy to do an act, that constituted the offence, or

(b) *section 72* consisting of the act that constituted the offence,

of which the person was so acquitted or convicted.

78.—The Act of 1967 is amended—

Amendment of Act of 1967.

(a) in section 13(1), by the insertion of “or an offence under *section 71, 72 or 73* of the *Criminal Justice Act 2006*” after “the offence of murder under section 6 or 11 of the Criminal Justice (Terrorist Offences) Act 2005 or an attempt to commit such offence”, and

(b) in section 29(1), by the insertion of the following paragraph after paragraph (k):

“(l) an offence under *section 71, 72 or 73* of the *Criminal Justice Act 2006*.”.

79.—The Schedule to the Bail Act 1997 is amended by the insertion of the following after paragraph 28:

Amendment of Schedule to Bail Act 1997.

“Organised
Crime.

28A.—An offence under *section 71, 72 or 73* of the *Criminal Justice Act 2006*.”.

PART 8

MISUSE OF DRUGS

80.—In this Part “Act of 1977” means Misuse of Drugs Act 1977.

Definition.

81.—(1) Section 15A of the Act of 1977 is amended by the insertion of the following subsection after subsection (3):

Amendment of section 15A of Act of 1977.