

## SCHEDULES

### SCHEDULE 1

Section 6

#### EXCLUDED OFFENCES FOR THE PURPOSES OF SECTION 6

#### PART 1

##### CRIMINAL CONDUCT ETC UNDER ARMED FORCES LEGISLATION

##### *Criminal conduct etc under armed forces legislation*

- 1 (1) An offence under section 42 of the Armed Forces Act 2006 (criminal conduct) is an “excluded offence” if the corresponding civil offence is an offence referred to in any of paragraphs 2 to 14, 30 and 31.
- (2) In sub-paragraph (1) the reference to section 42 of the Armed Forces Act 2006 is to be taken to include a reference to—
- (a) section 70 of the Army Act 1955 (civil offences),
  - (b) section 70 of the Air Force Act 1955 (civil offences), and
  - (c) section 42 of the Naval Discipline Act 1957 (civil offences).

##### *Corresponding offences under law of England and Wales (including under repealed provisions)*

- 2 An offence under any provision of the Sexual Offences Act 1956.
- 3 An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14).
- 4 An offence under section 1(1) of the Genocide Act 1969 (genocide).
- 5 An offence under section 54 of the Criminal Law Act 1977 (inciting child under 16 to commit incest).
- 6 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- 7 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).
- 8 An offence under any provision of the Sexual Offences Act 2003.
- 9 An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images).
- 10 An offence under section 62 of the Coroners and Justice Act 2009 (possession of prohibited images of children).
- 11 An offence under section 33 of the Criminal Justice and Courts Act 2015 (disclosing private sexual photographs and films with intent to cause distress).

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- 12 An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).
- 13 An offence at common law of outraging public decency.
- 14 An offence within any of paragraphs 18 to 20 (certain offences under the International Criminal Court Act 2001).
- 15 A reference in paragraphs 2 to 14 or paragraphs 30 and 31 to an offence (“offence A”) includes—
- (a) a reference to an attempt to commit offence A,
  - (b) a reference to a conspiracy to commit offence A,
  - (c) a reference to incitement to commit offence A,
  - (d) a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed, and
  - (e) a reference to aiding and abetting, counselling or procuring the commission of offence A.

*Interpretation etc*

- 16 (1) In paragraph 1(1) the reference to the “corresponding civil offence” is—
- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, to the corresponding offence under the law of England and Wales within the meaning of that section;
  - (b) in relation to an offence under section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955, to the corresponding civil offence within the meaning of that Act;
  - (c) in relation to an offence under section 42 of the Naval Discipline Act 1957, to the civil offence within the meaning of that section.
- (2) Section 48 of the Armed Forces Act 2006 (supplementary provisions relating to ancillary service offences) applies for the purposes of sub-paragraph (1)(a) as it applies for the purposes of the provisions of that Act referred to in subsection (3) (b) of that section.

## PART 2

### INTERNATIONAL CRIMINAL COURT ACT 2001

*Excluded offences within this Part*

- 17 An offence under the law of England and Wales or Northern Ireland within any of paragraphs 18 to 23 is an “excluded offence” in that part of the United Kingdom.

*England and Wales*

- 18 An offence under section 51 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes).
- 19 An ancillary offence under the law of England and Wales in relation to an offence within paragraph 18.

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- 20 An offence under subsection (1) of section 52 of the International Criminal Court Act 2001 (conduct ancillary to war crimes etc committed outside jurisdiction) where the act referred to in that subsection would, if committed in England and Wales, constitute—
- (a) an offence within paragraph 18, or
  - (b) an offence within this paragraph.

#### *Northern Ireland*

- 21 An offence under section 58 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes).
- 22 An ancillary offence under the law of Northern Ireland in relation to an offence within paragraph 21.
- 23 An offence under subsection (1) of section 59 of the International Criminal Court Act 2001 (conduct ancillary to war crimes etc committed outside jurisdiction) where the act referred to in that subsection would, if committed in Northern Ireland, constitute—
- (a) an offence within paragraph 21, or
  - (b) an offence within this paragraph.

#### *Interpretation*

- 24 In this Part of this Schedule—
- (a) references to an ancillary offence under the law of England and Wales are to be interpreted in accordance with section 55 of the International Criminal Court Act 2001;
  - (b) references to an ancillary offence under the law of Northern Ireland are to be interpreted in accordance with section 62 of that Act.

### **PART 3**

#### INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT 2001

- 25 An offence within any of paragraphs 26 to 28 is an “excluded offence” in Scotland.
- 26 An offence under section 1(1) of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes).
- 27 An offence under section 2(1) of that Act (conduct ancillary to war crimes etc) of engaging in conduct ancillary to an act that constitutes—
- (a) an offence within paragraph 26, or
  - (b) an offence within this paragraph or paragraph 28.
- 28 An offence under subsection (3) of section 2 of that Act of engaging in conduct ancillary to an act committed (or intended to be committed) outside Scotland, where—
- (a) the offence mentioned in paragraph (a) of that subsection is an offence within paragraph 26, or
  - (b) (as the case may be) the offence mentioned in paragraph (b) of that subsection is an offence within paragraph 27.

### *Interpretation*

- 29 In this Part of this Schedule references to an ancillary offence are to be interpreted in accordance with section 7 of the International Criminal Court (Scotland) Act 2001.

## **PART 4**

### OTHER OFFENCES

- 30 An offence under section 134 of the Criminal Justice Act 1988 (torture) is an excluded offence.
- 31 An offence under section 1(1) of the Geneva Conventions Act 1957 (grave breaches of the Geneva Conventions) is an excluded offence.

## **PART 5**

### PROVISIONS EXTENDING JURISDICTION IN RESPECT OF CERTAIN SEXUAL OFFENCES

#### *Section 72 of the Sexual Offences Act 2003*

- 32 (1) Where by virtue of section 72 of the Sexual Offences Act 2003 (offences outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of England and Wales or Northern Ireland, that offence is an “excluded offence” in that part of the United Kingdom.
- (2) Where by virtue of subsection (3) of that section proceedings for an offence may be brought against a person in England and Wales or Northern Ireland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in that part of the United Kingdom.

#### *Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))*

- 33 (1) Where by virtue of Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (offences outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Northern Ireland, that offence is an “excluded offence” in Northern Ireland.
- (2) Where by virtue of paragraph (3) of that Article proceedings for an offence may be brought against a person in Northern Ireland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in Northern Ireland.

#### *Section 55 of the Sexual Offences (Scotland) Act 2009 (asp 9)*

- 34 (1) Where by virtue of section 55 of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Scotland, that offence is an “excluded offence” in Scotland.
- (2) Where by virtue of subsection (2A) of that section proceedings for an offence may be brought against a person in Scotland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in relation to Scotland.

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*Provisions superseded by provisions mentioned in paragraphs 32 to 34*

- 35 Where by virtue of section 7 of the Sex Offenders Act 1997 (sexual offences committed outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of England and Wales or Northern Ireland, that offence is an “excluded offence” in that part of the United Kingdom.
- 36 Where by virtue of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual acts outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Scotland, that offence is an “excluded offence” in Scotland.