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The Creation of an English Criminal Code: 6 Acts

Sixth Act - Crimes Against the Person Act

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This sixth article argues that all Crimes against the Person legislation should be consolidated into one Act. Especially, the law on homicide and battery (homicide being an aggravated battery).

In particular, it should be made clear that murder is only committed when a person: (a) unlawfully and intentionally kills (which has always been the position since ancient times) or (b) inflicts GBH from which the victim dies, the assailant reckless whether death occurred or not. The basis for (b) has been incorrectly formulated since Vickers (1957) since it originates from policy decisions in an Act in 1603 and caselaw on dueling in the 17th century and not from Bracton's division (in c. 1250) of all acts - for criminal purposes - being licit (lawful) or illicit (unlawful) with the result that, where death resulted from (for example) an accidental killing, if the act was illicit it was murder (the latter was abolished by the Homicide Act 1957).

1. Introduction

Five previous articles have looked at the consolidation of English criminal law (legislation and common law) into 6 pieces of legislation *viz.* the first five (*italicized*) of the following Crime Acts:

- *Sex Crimes Act*
- *Property and Finance Crimes Act*
- *State Crimes Act*
- *Weapons Act*
- *Public Order Crimes Act*
- Crimes against the Person Act

A new Crimes against the Person Act involves the consolidation of crimes against the person. Thus, the content of this consolidation Act will comprise crimes relating to:

- Homicide (i.e. murder, manslaughter, corporate manslaughter)
- Non-Accidental Death (of child or vulnerable person)
- Grevious Bodily Harm (GBH)
- Actual Bodily Harm (ABH)
- Common Assault (battery)[1]
- *Assault* (i.e. threatened battery)[2]

[1] Battery - from the Anglo-Saxon '*beatan*' (to beat) - was (and still is) a generic term for all of common assault, ABH, GBH and homicide, these being an ascending scale of battery (homicide being a battery resulting in death). See **7**. For the detailed legal history of assault and battery from ancient times, see GS McBain, *Modernising the Common Law Offences of Assault and Battery* (2015) International Law Research, vol 4, no 1, pp 39-155 (*free online*).

[2] Unfortunately, '*assault*'- the latin translation (*assultus*) of the Anglo-Saxon word '*battery*' (n 1 above) - has, legally, been applied both to '*common assault*' (a form of battery) as well as to '*assault*' (being a threatened battery, i.e. one not actually carried out). This is confusing. Further, a *threatened* battery is an example (and the duplication) of '*harassment*' which was, always, based on intimidation by way of some *threat*. Thus, the word '*assault*' should be dropped as a generic term for battery in preference to '*violent injury'* (i.e. criminal injury, not all injury being criminal) which latter term is more intelligible today. And, a threatened battery (an assault, more specifically) should be dropped, being treated, instead, as an example of harassment. This will simplify, and clarify, the law in this area.

- Torture

Also:

- Abortion (inc. child destruction, infanticide)
- Intimidation (inc. harassment, threat to kill, stalking)
- Illegal Detention (false imprisonment, kidnap, slavery, trafficking)
- Crimes against Children (cruelty, child begging *etc*)
- Other Crimes

These are now considered in turn.

2. Homicide

(a) Some Legal History - 4 Categories of Killing [3]

'*Homicide'* (literally, man killing) is a generic description for murder [4] and manslaughter (including corporate manslaughter). In the eyes of the English law today, it is possible to kill a person:

(a) intentionally
(b) recklessly
(c) *negligently*
(d) *accidentally* (formerly, called misadventure).[5]

At the outset, it should be noted that (c) and (d) (i.e. accidently and negligently killing, see italics above) are *not crimes* and this should be made clear in legislation. Further, '*recklessly*' killing derives from the Victorian concept of '*gross negligence'* in the criminal law *and replaced it*. Thus, there are only 4 categories *not 5* (although many criminal lawyers, and some legal writers, are confused). Further, the only way to understand the '*mess'* that is the English criminal law is to understand its legal history. This is especially so in the case of the ancient crimes of homicide (murder, manslaughter) and violent injury (GBH, ABH, common assault). Thus, I set out a snap shot of the English legal history of *homicide* against the following 5 vital points:

- Medieval English criminal law derived, in the main, from Anglo-Saxon law
- Anglo-Saxon law was contained in legislation (dooms) drafted by clerics
- They followed the Bible (i.e. Old Testament law, being ancient hebrew law)
- Ancient hebrew law was based on older Babylonian law
- *All* the above categorized criminal killing into:

(a) intentional killing - murder - punishment death
(b) reckless killing (i.e. in a brawl) - manslaughter - not death (this to save manpower)
(c) accidental/negligent killing - treated in same category as (b)

From Anglo-Saxon times, *intentional* killing was always treated under English law as murder. It still is. In the case of purely *accidental* killing this was never treated as murder - even in Anglo-Saxon times. [6] However, compensation

[3] For the detailed legal history of murder and manslaughter from ancient times, see GS McBain, *Modernising the Law of Murder and Manslaughter* (2015) Journal of Politics and Law, vol 8, no 4, pp 9-177 (*free online*).

[4] Likely, our word '*murder*' came from the barbarous latin word '*murdrum*', the latin translation of the Anglo-Saxon word '*morth'* (death), see McBain, n 3, p 15. See, also, the ancient hebrew word for died/to die, *muwth* (*mooth, moth*).

[5] '*Negligently*' in English criminal law only really developed from the 19th century (before then - from ancient times - it was mixed up with accidentally). And, '*recklessly'* only really developed from the concept of '*gross*' negligence in the 20th century which latter term is no longer used in civil or commercial law.

[6] Anglo-Saxon law (and Biblical law) tended to view *accidental*, *negligent* and *reckles*s killing (the latter two in a brawl) as acts of God (divine providence) for which compensation (*bot*, in Anglo-Saxon) was payable to the victim's family. Further, under Anglo-Saxon law, a fine (*wite*) was payable to the king for disturbing his '*peace*' (i.e. committing a breach of the criminal law) in the case of *negligent* and *reckless* killing (which were not defined as such). However, *intentional* killing was treated as being done with '*malice*' (i.e. hatred, the sin of Cain, see Bible, Book of Genesis, ch 4, v 8) for which the *lex talionis* (the law of retaliation) in Biblical times (and under Anglo-Saxon law, following the Bible) mandated the death penalty (on the basis of '*an eye for an eye, a tooth for a tooth'*). In short, babylonian, hebrew and and Anglo-Saxon law viewed *accidental*, *negligent* and *reckless* (in a brawl) killing as being *unintentional* (hebrew, *daat bibli*, without knowledge (latin, *ignorans*)), see McBain, n 3, p 23.

to the victim could still be payable.[7] Further, very confusingly, for centuries, under English law, murder was not said be a killing '*with intention'*, but a killing with:

- '*malice [i.e. hatred] aforethought [i.e. premeditated]'*[8] or
- '*premeditated malice*' or
- in '*cold blood'*.

This confusion arose from poor English translations from the hebrew Bible (Old Testament), the hebrew concept of an *intentional* killing importing a *moral* (theological) condemnation (malice) which - as Maitland wittily put it - was just a word to '*swell the charge*.'[9] One which was preserved under Anglo-Saxon law because their legislation (dooms) were drafted by clerics and based on the Bible.[10] The hebrew words, also, made reference to *examples* (i.e. implied (constructive) presumptions of law where the crime of '*murder*' was to be upheld by the hebrew courts). Thus:

- any *premeditated* (i.e. previously planned or plotted) killing was adjudged to be '*intentional*' - such as killing:
  - in the course of a highway robbery (brigandage)
  - using poison
  - using sorcery (it was thought possible to kill a person with spells)
  - a house breaker (burglar)
  - where the victim's body was buried secretly afterwards (the sin of Cain).[11]

Hebrew law viewed such killings as being done in '*cold blood'* (intentionally) as opposed to when a killing was done in '*hot blood'*. That is, in the course of a brawl[12] (a fight, also called a '*chance medley'* under English law)[13] between the parties.[14]

- In the case of an intentional killing (but not when in a brawl) this set up a *'blood feud'* with a moral obligation being imposed on the nearest male kin of the victim to avenge (atone for) it, by killing the killer. This form of *self -help* capital punishment (blood for blood, see Bible, Book of Genesis, ch 9 v 6) prevailed in tribal societies where there was no centralized system of justice to impose substitutional financial compensation;
- In ancient hebrew society, as the Bible shows, centralized justice to suppress tribal (family) revenge took a long time to happen - such occurring in stages with the establishment of sanctuaries (to prevent immediate revenge) and a court process; [15]

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[7] Under Anglo-Saxon law - in the case of *accidental* killing - no fine (*wite*) was payable to the king, because no crime was committed. Instead, compensation (*bot*) was payable to the victim's family. By the 14th century, the latter was phased out - although it was not formally abolished until 1828, see 9 Geo 4, c 3, s 10 (*no forfeiture or punishment for non-felonious homicide*) which was superceded by the OPA 1861, s 7 'no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune [accident] or in his own defence, or in any manner without felony.'

[8] The Biblical hebrew word was '*bearemah*' (the 'e's are inverted) meaning guile (scheming). That is, secret planning. This was the '*sin*' (crime) of Cain (where the body of Abel was secretly hidden to prevent detection, see Bible, Book of Genesis, ch 4, v 8). Also, McBain, n 3, pp 20, 21. The Bible (Book of Exodus, ch 21, v 14) - in the hebrew - refers to '*wilfully* (i.e. intentionally, presumptuously) attacks. See also McBain, n 3, p 17, n 102. It may, also, be noted that the earliest Roman Law (the Twelve Tables c. 449 BC) stated that '*whoever knowingly [i.e. intentionally, [latin, sciens] and maliciously [latin, dolo – probably, better translated as wrongfully (unlawfully)] kills a free man must be put to death*'. McBain, n 3, p 26.

[9] See McBain, n 3, p 21.

[10] Expressly so, see introduction to laws of king Alfred c. 892 AD, see McBain, n 3, p 29.

[11] Why this sin (crime) was so grevious is that secret burial sought to avoid detection not only of a crime, but evade the due compensation payable to the family of the victim for the killing. Thus, where a body had been hidden, it was presumed murder was afoot.

[12] The Code of Hammurabi (a king who reigned in Babylon 1792-50 BC, a 1000 years prior to the law of Moses) commandment (law) no 206 provides that a man who strikes another man in a '*brawl*' (the akkadian word is '*risbatim*' meaning a fight - our word '*fight*' coming from the Anglo-Saxon '*fiht*') can pay compensation (including where death ensues) if he swears '*I did not strike intentionally*' (and this is upheld). If not upheld, the punishment was death on the basis of the *lex talionis* exemplified in commandment (law) no 196 '*If a man has destroyed the eye of a freeman, his own eye shall be destroyed*', which Christ quoted.

[13] '*Medley*' (meddle) in old English meant a brawl and '*chance*' meant '*sudden'*. However, the word may (originally) have been '*chaud"* (hot) - that is, a brawl in hot blood (in a passion, not pre-meditated). See McBain, n 3, p 93 (quoting Blackstone (writing in 1765)).

[14] In babylonian, biblical, Anglo-Saxon, early English times - and even today - brawls are common sources of killing. In order not lose manpower for war, early English law treated these, not as murder, but as manslaughter. So too, dueling (which was regarded as persons being forced to fight to save their honour). However, in the time of Elizabeth I (1588-1603) and James I (1603-25) the king and the courts adopted a clear '*public policy'*, to categorise duels as murder. Also, stabbings (with a sword or dagger) where GBH was inflicted and the assailant was reckless whether the victim died or not. From this, derived '*reckless*' killing. See also ns 40-5.

- These confusing terms for murder (malice, malice aforethought *etc*) continued right up until Victorian times [16] when, at last, the English courts and legal writers began to switch to saying that murder occured when a killing was '*intentional*' [17] - which, actually, was the clear hebrew meaning of '*murder*' in Biblical times - a legal concept which hebrew law had taken from earlier Babylonian law.

In the case of *intentional* killing (murder, cold blood killing) the punishment was death by judicial execution (usually hanging). In such a case, in Anglo-Saxon times, the payment of compensation (blood money) as well as a fine to the king - for breaching the criminal law (his peace) - was not possible. That is, murder was '*unatonable*'.

- Contrariwise, when the killing was in '*hot blood'* (i.e. in a duel or brawl) in Anglo-Saxon times this was generally treated as manslaughter.[18] That is, a man could escape the death penalty by paying compensation to the victim's family and a fine to the king. This legal mitigation of the death penalty was, mainly, to save men for war - as well as to accept that there was, likely, provocation and self-defence involved in brawls;
- Thus, killing '*recklessly*' (in a brawl) [19] was - in olden times - manslaughter as well as under English law up to the reign of James I (1603-25). Today, it is, generally, treated as murder where (a) GBH was intended;[20] (b) the victim dies; and (c) the assailant was '*reckless*' whether the victim lived or died;[21]
- *'Negligent'* killing only really developed as a distinct legal concept in the time of Bracton (c 1250).[22] It was held to be manslaughter, because of the lack of intention. Further, there was always a large element of public policy in this in olden times. If a doctor negligently killed his patient and was executed for murder, there would soon be no doctors left. And, if people (invariably, men) were executed for negligent killing there would be no army left. Thus, negligent killing was (invariably) treated as manslaughter;
- In conclusion, in babylonian, hebrew, Anglo-Saxon (whose dooms followed biblical teaching) and early English society - despite the confused wording (and translation of babylonian concepts into other languages) - the law of homicide was very clear and (one suspects) trials were very short. The issue was simple for the judges (elders).

How was the victim killed?

- If in a *brawl* (*recklessly*) or *accidentally* (including *negligence*) the death penalty did not apply. But if intentional, it did. And to determine the latter, if the killing occurred in certain situations (highway robbery, house breaking (burglary), secret burial of the corpse, using poison or sorcery *etc*) it was premeditated and - by presumption of law - it was forthwith held to have been intentional and there was nothing further to be said. This, also, explains why it was a complete self defence for a person to kill another in these circumstances, since he was killing a man who (by

[15] The Book of Genesis (uncertain date, but *pre*-Exodus) ch 9, v 6 makes no exception to death for homicide. The Book of Exodus (c.1446 BC) ch 21 v 14 refers to some form of sanctuary ('*mine altar'*) save for murder (intentional killing). The Book of Deuteronomy (c 8th-6th c BC), ch 19 v 1 stipulates 3 cities of refuge for non-intentional killing (and there may have been a central appeal court in Jerusalem by this time). The Book of Numbers (uncertain date), ch 35 v 9 refers to 6 cities of refuge (and to trial before the elders in the same). Finally, it may be that the blood feud (*kofer*) for homicide ended in hebrew law by 850 BC when Jehoshapat established federal courts and sheriffs in every canton, with a supreme appellate court in Jerusalem. See generally, McBain, n 3, pp 21-5.

[16] It was not until Victorian times, that the word of moral opprobium '*malice*' - and expressions such as '*pre-meditated'* (*malice aforethought*) - were discarded, doubtless because Victorian hebrew scholars were able to provide better biblical translations of the Book of Exodus as well as of babylonian law from which the hebrew law of homicide derived. See also McBain, n 3, pp 19-23.

[17] One of the first instances was *Welsh* (1869) 11 Cox CC 336 in which Keating J - with admirable clarity - stated: '*Malice aforethought means the intention to kill*'. See McBain, n 3, p 107.

[18] '*Manslaughte*r' is simply the translation from the latin '*homo cidium*' (man killing) and this was in use by 1480 in English law to refer to a killing that was not murder. See McBain, n 3, p 15, n 84.

[19] Thus, the ancient law of Hammurabi (Babylonian law) was followed by the Bible and Anglo-Saxon law as having only 2 categories of killing: *murder* (i.e. intentional killing) and *manslaughter* (i.e. killing in a brawl (recklessly) or negligently). However, the law of Hammurabi (babylonian law) and the Bible did not employ the word '*murder*' as such (this word being a, later, latin translation of an Anglo-Saxon term). Instead, reference was made to intentional killing, which clearly occurred when it was pre-meditated.

[20] As will be seen, the author argues that this is inaccurate. *Intention* to commit GBH is not enough (and is based on a constructive interpretation of law). In older caselaw, there had to be actual GBH and the killer had to be *reckless* as to death in the victim, see fn 21 below.

[21] However, there is still confusion over the precise ambits of reckless killing being murder - and much of modern English caselaw (and Law Commission reports) are erroneous since they have not traced the legal history of how '*reckless*' killing developed in the time of James I, see fns 40-5.

[22] By that I mean that Bracton - in his legal text '*On the Law and Customs of England'* c. 1250 (trans Thorne, Cambridge UP, 1968-76, 4 vols, also online) - separated *accidental killing* from *negligent killing* (i.e. killing without due care) as a concept. See McBain, n 3, p 42.

presumption of law) was *intending to kill him*.[23] It was rough (but fair) self revenge. A highway man (or burglar) attacks you. You kill him. End of story (and one could act pre-emptorily).

Today: (a) intentional killing is murder, (b) reckless killing in the course of intended GBH is murder; (c) reckless killing (when no murder) is manslaughter. Accidental killing is not murder or manslaughter (indeed, not a crime at all). So too, negligent killing. Suicide was treated as self-murder. Thus, a crime. However, the Suicide Act 1961 made suicide no longer a crime. And, a suicide pact is manslaughter. In short, everything is very simple - bar the ambits of reckless killing in the course of GBH - and all this can easily be set out in legislation.

(b) Defences: Justifiable & Excusable

Under English law - from early times - defences to murder or manslaughter were split into 2 distinct categories (for good reason) *viz.*

- Justifiable - where the law *permits* the killing, holding it to be '*lawful*';
- Excusable - where the law *mitigates* the killing in light of certain circumstances.

Killing was held to be *justifiable*, that is, '*lawful*':

- when the *death penalty* was imposed by a judge after trial (now, not applicable);
- when a man killed another in *battle* in war time.[24]

Obviously, if these defences were not held to be lawful in earlier times, the criminal law system could not have operated, nor the realm be protected. Today, since 1998, the death penalty has been abolished. As for war time, in the case of killing during a war against the sovereign (i.e. civil war) this is covered by the Treason Act 1351 (although the author argues this legislation is no longer required).[25] In the case of *excusable defences* (originally designed to prevent the establishment of a blood feud), today, these comprise the following:

- ***Self Defence***. From Anglo-Saxon times, reasonable *self defence* has been a complete defence. For example, it is only reasonable for a man to kill another trying to kill him, if this is the only thing he can do in the circumstances. This legal concept of self-defence was incredibly simple in times past and whether self-defence was '*reasonable'* was a matter of fact.[26] However, in modern times, poor quality legislation has confused things.[27] As to what was *self defence*, there were 4 categories *viz* : [28]
    - self defence;
    - defence by the defendant of his family and household (his '*kindred*' (kin));
    - *defence by the defendant of his 'lord'*[29] *(obsolete);*
    - defence by the defendant of his property (his real estate).[30]

[23] Did highway robbers and house breakers (burglars) always try and kill the victim? One would suggest *'yes',* since they did not want a witness and they knew that it was death for them if caught. As for thieves - under Anglo-Saxon law - it was a complete self defence to kill a thief caught with the goods on him (i.e. hand having or back bearing) since the same applied. Indeed, a thief could be killed then, and there, as an *outlaw* (one with the '*wolf's head'* on him, wolves being a serious danger and killers of the same being rewarded for the head). The legal right to administer pre-emptory justice on such thieves, probably, only ended in the early 14th century in England.

[24] See also McBain n 3, p 74 (Coke in 1641).

[25] GS McBain, *The Creation of an English Criminal Code: 6 Acts. Third Act - State Crimes* (2025) International Law Research ('**ILR**'), vol 14, no 1, pp 106-38 (*free online*).

[26] There were some legal '*rules*' developed by the courts such as: (a) a man must have been struck prior to exercising self defence: (b) a man attacked must have retreated as far as he could ('*back to the wall'*) before claiming self-defence. These rules were unhelpful and confused matters. They have been discarded, see Archbold (2024) 19-47.

[27] At present, self-defence is covered by a number of pieces of legislation as well as the common law. Thus, it is contained in the Criminal Justice and Immigration Act 2008, s 76 (which refers to the common law - especially as laid down in the case of *Palmer* (1971)) as well as in the Criminal Law Act 1967, s 3.

[28] Various pieces of legislation (now repealed) expressly made it lawful to kill in self defence, e.g. those of 1293 (a parker killing after hue and cry), 1532 (a person killing one who attempted to rob or murder in (or near) a highway, i.e. a brigand, highwayman), 1553 (killing an unlawful assembler after a proclamation to disperse an unlawful assembly), 1714 (killing a rioter after a proclamation to suppress a riot). See McBain, n 3, p 129.

[29] William I (1066-87) imposed a feudal (military) system of allegiance, in which all subjects owed allegiance to him as king (i.e. paramount allegiance to him as the overlord). They, also, owed allegiance to their '*lord*', the person who was immediately responsible for them to the king (so-called '*mesne*' (intermediate) lords). For the feudal system, see GS McBain, *Modernising English Land Law* [2019] International Law Research, vol 8, no 1, pp 30-84 (*free online*).

Any killing by the defendant was a *complete* defence to murder (and manslaughter) if it was reasonable in the factual circumstances.[31] Today, the above 4 categories should be covered by 1 section in legislation governing '*self defence'*. And, it should apply to defending any other person. Not just to family or kin;

- ***Killer too young to have Capacity***. It was a complete defence to murder *when the killer was held to be too young* - the basis being that the same had no capacity to form an intent for legal purposes. This still prevails, today, in respect of children under 10 at the time of the killing;
- ***Mental States - Insanity/DR/Loss of Control***. Insane people have been treated - from earliest times - as having no *capacity* to form an intent for legal purposes.[32] Today, a special verdict permits - in the case of murder or manslaughter - the accused to be found not guilty by reason of insanity. Similarly, on a charge of murder, where diminished responsibility (DR) is found, it *reduces* a conviction of murder to one of manslaughter. So too, loss of control (LSC) (also, in the case of a suicide pact);
- ***Bona Fide Medical Treatment/Euthanasia***. A doctor may kill a patient in the course of his treating the same, such as on the operating table. In olden times, the *rationale* for not treating such as murder/manslaughter, was that it was '*therapeutic*' (i.e. the intention had been to heal, not to kill). A patient can, also, refuse medical treatment and a doctor is not killing the same as a result of accepting this decision. Finally, legislation is likely to be enacted in the near future - enabling terminally ill people to undergo voluntary (consensual) euthanasia (assisted dying) and this would, also, be a defence to murder (and manslaughter).

Other *'excusable'* defences no longer exist.[33]

(c) Coke (1641) to Present

Coke, in his *Institutes of the Laws of England* (pub 1641) stated:

'Murder is when	
a man of sound memory	*[i.e. not insane] and*
of the age of discretion	*[over 10 years old],*
unlawfully	*[i.e. not when there is a defence]*
kills within any county of the realm	*[a matter of jurisdiction]*
any reasonable creature	*[i.e. a person]*
in rerum natura	*[who is not an unborn child]*
under the king's peace,	*[i.e. when subject to the English criminal law]*
with malice aforethought	*[i.e. intentionally],*
either expressed by the party	*[i.e. evidenced by the party]*
or implied by law…' [34]	

Today, things are quite different even though this quotation is still made in legal texts (it is not useful):

- **Insanity**. If an insane man commits murder or manslaughter, a special verdict is given of not guilty by reason of insanity;
- **Capacity of Child**. The age of discretion (i.e. for a child to be held legally capable under the criminal law) is now 10;[35]

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[30] In Anglo-Saxon times, every man had a personal '*peace*' (i.e. the right to enforce the criminal law) in his house and the curtilage (Anglo-Saxons had houses/huts which were surrounded by a fence). Thus, for example, a man could kill a burglar (a '*house breaker'*, because the man broke the fence surrounding the house) if the same was found within his '*fence*'. Babylonian law was the same, see McBain, n 3, p 18.

[31] See McBain, n 3, p 35.

[32] Under Roman law, a madman (or infant) who killed was held not liable for homicide through lack of capacity to form an intention, see McBain, n 3, p 27.

[33] Anglo-Saxon law and early English law made it excusable to: (a) kill an outlaw; (b) a thief who resisted capture (or with the stolen goods on him) (c) an adulteress caught in the act; (d) a housebreaker (burglar); (e) a highway robber.

[34] See McBain, n 3, p 109. In 1902, in his longstanding legal text (Kenny, *Outlines of Criminal Law* (1st ed, 1902), Kenny - following Coke - said that the 7 pre-requisites for murder (from 1532) were 1. Unlawfully. 2. Killing. 3. A reasonable creature. 4. In being. 5. Under the King's Peace. 6. with malice aforethought [i.e. intention] either express or implied. 7. the death following within a year and a day. Kenny, also, noted that 2-5 and 7 applied to manslaughter. This was correct. Today, 7 is gone, 3 & 4 are merged (excluding an unborn child). In the case of 6, malice aforethought is now called '*intention*'. And, implied (constructive) intentions were abolished by the Homicide Act 1957, s 2 (save for transferred malice). Thus, today, there are 4 pre-requisites, the 1. Unlawful. 2. Intentional (or Reckless). 3. Killing of. 4. A person (excluding an unborn child). As for '*under the king's peace'*, see text above.

- **Jurisdiction**. As to murder being committed outside the *'realm'* but being triable within, this refers to the jurisdiction of the English court. It is set out in elderly legislation which should be updated;
- **Unborn Child**. A '*reasonable creature in rerum natura'* did not refer to an unborn child in Coke's time - since such was not held to be '*in esse'* (in being). Today, such is dealt with under the law relating to abortion;
- **Under the Criminal Law**. '*Under the king's peace'* (i.e. under the criminal law) means that it is justifiable to kill: (a) pursuant to a court judgment; (b) an enemy alien in battle in war time; (c) a British subject in battle under the law martial (when a person '*levies*' war (i.e. engages in battle) against the sovereign under the Treason Act 1351).[36] Today, (a) no longer applies (the death penalty having been abolished);
- **Implied by Law**. Coke referred to cases where the common law (judges) implied malice (it is, also, called constructive malice) in 7 cases. None of these cases now apply (save for so-called '*transferred malice'*).[37]

In 1980, the Criminal Law Revision Committee noted that there '*has never been any doubt that an intention to kill is a sufficient mental element for the crime of murder'*.[38] Similarly, the Law Commission in a draft Criminal Code in 1989 (one never enacted) provided (s 54) '*A person is guilty of murder if he causes the death of another (a) intending to cause death*…'. This is indubitably correct and has always been the position since Anglo-Saxon times (indeed, since Biblical and Babylonian times). The Law Commission, also, noted in 2004 that the law of murder was a '*mess*.'[39] However, the Law Commission must bear some blame since it (often) fails to make any attempt to trace the legal history. A good example of this is the adoption of '*recklessness'* into the law of murder in modern times. The 2 roots of this importation have failed to be presented to judges by counsel in many cases, leading to complete confusion. Thus, the position as to GBH where death ensues and when such elevates the crime in law to murder, is mis-understood. The 2 roots of such derive from what we would call 2 '*public policy'* decisions in the time of James VI when he became James I of England (1603-25). *viz.*

- **Act of 1603 (rep 1828) - Brawls**. When James VI came down to London there was frequent antagonism between Scotsmen and Englishmen, with many duels and brawls between the same (the Scots, usually, carried a short dagger, the *sgian-dubh*). If a person died, it was not murder under English law because - as the law then stood - the killing was in the course of a brawl. That is, in hot blood (i.e. in a passion) and not cold blood (i.e. intentional). However, one suspects that many of these brawls (as from time immemorial) were engineered (no different to duels, see below). An Act of 1603 was passed to try and suppress this spate of reckless killing.[40] It stated:

> 'Every person…*which shall stab or thrust any person or persons that hath not any weapon drawn, or that hath not then first stricken the party*,[41] which shall so stab or thrust so as the person shall thereof die within the space of [6] months then next following, although it cannot be proved that the same was done of malice forethought [i.e. intentionally] shall…suffer death [as] in the case of wilful [i.e. intentional] murder…';

[35] In 1965, Smith and Hogan, *Criminal Law* (1st ed, 1965), p 165 indicated that '*age of discretion'* referred to a child over 10 and - if under 14 - if '*he has a mischevious disposition*'. The latter no longer applies. See, also, McBain, n 3, p 118.

[36] Anyone who opposed the raised royal standard of the king on the field of battle could be lawfully killed (as a traitor) the English courts being held to be '*closed'* (martial (military) law applying). This applied to persons who were not '*aliens*' (i.e. foreigners who owed no allegiance to the sovereign). If they were aliens, they could be killed in battle pursuant to the law martial under the common law (not under the Treason Act 1351 which only applied to subjects, since only they owed allegiance).

[37] See McBain, n 3, pp 76-7 *viz.* 1. unprovoked killing. 2. killing a police officer in the execution of his duty. 3. killing arising from an unlawful act. 4. killing by a thief (robber). 5. killing by transferred malice. 6. killing by cruelty/neglect (including the duress of a goaler). 7. killing by poison (because it was secret). The Homicide Act 1957 abolished implied malice (also, called constructive malice - both referring to presumptions of law). See, also, Archbold (2024) ch 19-19. It may be noted that the use of legal presumptions in respect of murder (likely) derived from hebrew (and babylonian) law where it gave examples of pre-meditation on the basis of which the judges concluded that the death penalty applied.

[38] McBain, n 3, p 122. Also, in *Welsh* (1869) 11 Cox CC 336 where Keating J stated '*Malice aforethought means the intention to kill*'. In *Latimer* (1886) 17 QBD, 361 Coleridge CJ referred to a '*malicious intent'* - likely, referring to the earliest Roman Law (the Twelve Tables c. 449 BC) which stated that '*whoever knowingly [i.e. intentionally, latin sciens] and maliciously [latin, dolo] kills a free man must be put to death'*. See McBain, n 3, p 26.

[39] McBain, n 3, p 130.

[40] The preamble sums up the purport '*To the end that stabbing and killing men on the sudden, done and committed by many inhuman and wicked persons in the time of their rage, drunkenness, hidden displeasure, or other passion of mind*', might be restrained. See also McBain, n 3, pp 65-6.

[41] This wording in italics preserved the law of provocation.

Thus, this Act of 1603 was a clear policy decision to extend the law of murder to cover brawls where a weaponless (or non-provoked) person died - the killer (effectively) being reckless as to this outcome when engaged in GBH against the same;[42]

- **Dueling**. Huge numbers of men (needed for war) were killed in duels in the 16th century (for example, in France it is calculated some 4000 of the social elite died in duels between 1589-1607). Usually, under English law, dueling was not treated as murder (being in '*hot blood'*). However, from 1558 - in a clear '*policy decision*'[43] - the courts began hold it was murder in the case of a duel. This was picked up by Lambarde in the first edition of his widely disseminated text on the criminal law (*Eirenarcha* or *Office of the Justice of the Peace*, 1st ed 1581). James I (1603-25) adopted a similar policy in his time, issuing a Proclamation against Private Combats and Combatants in 1613/4. Also, Coke CJ was instrumental in promoting this policy in the important case of *Taverner* (1616). In this case, B challenged T to a duel because T did not pay him money owed. The parties met 2 days later according to an appointment and dueled. T killed B. The court held it was murder by T.[44] Finally, it may be noted that dueling (in practice) ended in England by 1852 - although it had died out (generally) long before.[45]

These are the 2 *roots* for holding '*reckless conduct'* being treated as murder when GBH was committed (GBH in those times being life threatening). However, it is interesting that the *textbook source* for promoting this being murder (leaving aside Act of 1603 and the case of *Taverner* (1616)) in Victorian times was a judge, Stephen J, in 1863. He was aware of the above because of his knowledge of legal history and his work on drafting a criminal code for India.[46] Thus, Stephen J observed that recklessness as to death ('*wanton indifference'*) was as blameworthy as *intention*.[47] The next legal text writers to promote this were Smith & Hogan in 1965 (in the first edition of their work on Criminal Law). However, unfortunately, they did not consider the policy background to this.[48] Things were not helped by two major legal texts on the criminal law expiring at the same time as they wrote - Russell in 1964 (the 1st ed was in 1819) and Kenny in 1966 (the 1st ed was in 1902). Thus, there was a real vacuum as to criminal legal history. It is not surprising, therefore, that the House of Lords in *Hyam v DPP* (1975) struggled (mightily) with recklessness being murder, since neither they (nor counsel) adequately knew the legal history.

- ***Law Commission in 1980***. In 1980, the Criminal Law Revision Committee - while accepting that '*intention to kill'* was murder - sought to deal with the confusion arising from *Hyam* (1975) by indicating that '*reckless killing*' was when the killer *intended* (unlawfully) to cause GBH '*and [he] knew that there was a risk of causing death'*.[49] The problem of this is that the Committee failed to understand the legal history. Thus, this formulation is too indistinct and too wide *viz:* (a) an *intention* to cause GBH [50] is not enough - GBH must actually occur (see 1603 Act and dueling). Also, (b) the killer knowing there was a risk of causing death is not enough – the killer must be reckless as to death occurring (i.e. wantonly indifferent). Also, this in the context of GBH being life threatening;

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[42] '*Brawl'* meant very serious fighting (as here, with weapons) in which grevious bodily harm (GBH) was likely to be inflicted, with a substantial risk of death (medicine being very rudimentary).

[43] See the case of *Herbert* (1558) interpreted by a judge Dalison 'Note also by the justices, that when two men intend to fight together and appoint a place to do it, and when they are together one of them kills the other [i.e. in a duel], this is clearly willful [intentional] murder in the one who killed, even though his intention was only to beat or wound him, for that goes to the person and he is slain in that malice.' This case was followed by Lambarde (in 1581 in his text), see McBain, n 3, p 61.

[44] See McBain, n 3, p 148.

[45] Ibid, p 114.

[46] In 1883, Stephen published his *History of the Criminal Law of England* (1st and only ed, 1883, 3 vols). However, in his *General View of the Criminal Law of England* (1863) he had already considered the law on homicide. See also his *A Digest of the Criminal Law: Crimes and Punishments* (1st ed, 1883; 9th ed, 1950 (last ed)).

[47] Thus, in his *General View* (1863) Stephen stated: '*A reckless act, likely to cause death, would produce as much disapproval as if there had been a direct intention to kill. For example: if a man wantonly fired a pistol at another's head, it would not make much difference morally whether he meant to kill or no'*. McBain, n 3, p 107. It may, also, be noted that the Royal Commission in 1839 (in a draft Criminal Code), art 14 had proposed '*The killing of another is of express malice [murder] where death results from a deliberate intention to kill or to do great [grevious] bodily harm to the person killed'*. McBain, n 3, p 105 n 980. However, this Royal Commission failed to advert to the 2 roots of '*recklessness*' in the context of GBH. Thus, the Commission failed to note that *intention* alone to cause GBH was insufficient (the 1603 Act was repealed in 1828 which did not help). Also, '*deliberate* intention' is tautologus ('*deliberate*' or '*wilful*' means the same as intention).

[48] McBain, n 3, p 118.

[49] 'There is one category of reckless killing where we believe there would be general agreement that the stigma of murder is well merited. That is where the killer intended unlawfully to cause serious bodily injury [GBH] and knew there was a risk of causing death. The intention to cause serious bodily injury puts the killing into a different class from that of a person who is merely reckless, even gravely reckless.' See McBain, n 3, p 122.

[50] The Committee referred to '*serious bodily harm'*. However, it seems clear that they were referring to GBH (i.e. very/really serious bodily injury) and not less. Cf. n 47 (Royal Commission in 1839).

- ***Law Commission in 1989***. In 1989, the Law Commission - in a draft Criminal Code - fell into the same problem of not knowing the legal history and producing a confusing formulation. While, also, holding an intention to kill was murder they held the latter to include '*intending to cause serious personal harm [GBH] and being aware that he may cause death'*;[51]
- ***Law Commission in 1996***. Given this, these formulations should (it is asserted) not be relied on. Nor that of the Law Commission in 1996 which - in a report on Involuntary Homicide - recommended the creation of a new crime of *'reckless killing'* (also, one of '*killing by gross carelessness'*).[52] This would only confuse things and there is no need. Another Law Commission report in 2005 was equally confused. It proposed murder comprising an intention to kill or an '*intention to do serious harm.'* [53] However, '*serious harm'* is ABH ('*actual*' meaning serious) and not GBH. Thus, this - like the reports of 1980, 1989 and 1996 - ignores legal history and is too wide. Further, in important cases such as *Vickers* (1957) and *Cunningham* (1982), the legal history was inadequately explained to the court;
- ***Flawed Legal Analysis***. Thus, all the above legal analysis and *Hyam (*1975) is based on a flawed legal analysis. This formulation is (likely) based on a case (undecided) called *Herbert* (1558) which was then picked by a legal writer Pulton (only work in 1607) and followed by another legal writer and judge Foster (in 1776) and by the legal writer Russell (in 1819, the last ed of which was in 1964).[54] In *Herbert* (1588), Saunders CJ (and the majority) thought it would be murder when a man engaging in an unlawful act (in this case, affray) killed another (in this case, a bystander by transferred malice when throwing a rock). Thus, by way of an implied (constructive) presumption of law, affray (an unlawful act, but not GBH as such) was elevated to an intent to commit murder. But none of this was good law for the purposes of *Hyam* (1975) - or the above Law Commission reports - since such implied (constructive) presumptions of law were abolished by the Homicide Act 1957 (one says that; however, there is no doubt the 1957 Act was poorly drafted). It is, also, logically unsound, since an attempt to murder requires an intent to kill.[55] *In other words, all this analysis is flawed, being based on abolished presumptions of law. Further, it ignores the real basis for elevating GBH to murder - the more stringent policy decisions on brawls and dueling which refer to death resulting from GBH where the killer was acting recklessly. In short, the Law Commissions followed a mis-leading trail - caselaw referring to an unlawful act - and not to GBH per se;*
- ***Only True Basis for Elevating GBH to Murder***. The true (and *only*) basis for elevating GBH [56] to murder when death occurs is when the killer is *reckless* whether death occurs since: (a) it has precedent in the Act of 1603 and *Taverner* (1616) (dueling) and (b) *it is not a presumption of law, being instead based on a factual assessment of the mental state of the killer* (i.e. the same could not have cared less whether the victim died or not). Finally, Lord Mustill in *A-G's Reference (No 3 of 1994)* stated:

> 'One conspicuous anomaly is the rule which identifies the '*malice aforethought'* [i.e. intention] (a doubly misleading expression) required for the crime of murder not only with a conspicuous intention to kill but also an intention to cause [GBH]. It is, therefore, possible to commit a murder not only without wishing the death of the victim but without the least thought that this might be the result of an assault. Many would doubt the justice of this rule which is not the popular conception of murder and (as I shall suggest) no longer rests on any intellectual foundation. The law of Scotland does very well without it, and England could perhaps do the same.'[57]

This remains true. Murder does not require *malice* (hatred) to be proven and never has (it was an epithet of moral disapprobation). Further, intention does not have to be *aforethought* (premeditated) in the sense of prior planning.[58] Such

[51] McBain, n 3, p 125. '*Personal*' is a synonym for '*bodily*', itself, a synonym for '*physical*'.

[52] See McBain, n 3, p 127.

[53] Ibid, p 130. The Law Commission, also, proposed that manslaughter be committed in 4 ways. However, this is far too complex.

[54] For Pulton, see McBain, n 3, p 67. For Foster, see p 95 (he referred to an intention to do GBH, restricting the unlawful act to a *felonious* act (GBH, being felonious, was included)). For Russell (in 1819), see p 100 (he further restricted this to GBH excluding other unlawful acts). However, all these writers were so holding on the basis of a constructive (implied) presumption of law re an *unlawful act*, something which no longer applies. See, also, a Royal Commission draft Criminal Code in 1879 (intention to kill or do GBH), see McBain, n 3, p 106.

[55] See Glanville Williams (in 1983) 'a charge of attempt to murder requires an intention to kill, and cannot be established by proving an intention to do [GBH]. It may seem remarkable that a person cannot be convicted of attempt to murder when he deliberately inflicts [GBH] upon another, and yet can be convicted of murder, if as a result of the injury, the victim dies.' See McBain, n 3, p 124.

[56] It can *only* be GBH, since murder is aggravated GBH (i.e. one stage of battery beyond GBH). It cannot be another unlawful act (such as affray) since the Homicide Act 1957 abolished (or should have) elevations on the basis of '*unlawful*' acts.

[57] McBain, n 3, p 127, Lord Mustill quoting the case of *Cunningham* [1982].

[58] In other words, *pre-meditation* (pre-planning, plotting) is illustrative (an example) of *intention* (as babylonian and ancient jewish law intended with their examples). However, intention is not limited to such - it can be on the spur of the moment.

term is misleading. It can occur at the time of the killing. Further, the basis of (legally) altering the fact of *intention to commit GBH* to one of an *intention to kill* is, to create a constructive (implied) presumption of law in the situation where such presumptions have so badly distorted the same for many centuries, and the Homicide Act 1957 abolished them.

- ***Misleading Caselaw from 1957***. Finally, misleading caselaw - more recently - derives from *Vickers* (1957) which *Cunningham* (1982) followed.
    - In that case, Goddard CJ thought that *implied* and *constructive* malice were different.[59] This is incorrect. They are synonyms (referring to presumptions of law). He also thought the Homicide Act 1957 preserved the former. However, although the Act is poorly worded and unclear,[60] it is generally taken to have excluded all constructive (implied) malices, save for transferred malice;[61]
    - More importantly, Goddard CJ indicated that murder had '*always*' been defined in English law to include where the accused *intended* to cause GBH and the victim died.[62] This, however, is not so - it was a constructive (implied) malice deriving from an '*unlawful act'* a separate root - one which did not reflect the 2 roots above which derived from legislation (a 1603 Act) and caselaw (*Taverner* (1616)) that there was elevation to murder only in the situation where there was *actual* GBH (such being life threatening) and *recklessness*;
    - Thus, Goddard CJ referred to a different root (unlawfulness)[63] a wider theological formulation (originally Bractonian) - one which required a supplanting (by presumption of law) of intention in the accused (who did not intend to kill but to commit GBH) - one which the Homicide Act 1957 is taken to have abolished. Further, Goddard CJ may have only done this as a policy reason, no longer appropriate.[64]

In conclusion, the formulation of 'reckless' killing being murder (i.e. only an intent to commit GBH where death results) is - at present - a mess leading nowhere. This is due to the courts - and the Law Commission - having failed to identify the root from which it derived (also, confusing very serious injury (GBH) with serious injury (ABH)). However, this can be (easily) rectified in the process of consolidating the criminal law.

(d) Hope at Last

In 1994, a noted judge (Lord Mustill), declared: '*the law of homicide is permeated by anomaly, fiction, misnomer and obsolete reasoning*'.[65] Very true. Yet, today, there is a good opportunity to solve the problem as to murder, due to certain events.

- In 1998, the death penalty ended for all crimes (including high treason and piracy with violence). Thus, the only *justifiable* defence - to murder and manslaughter - is killing *in battle*. Such can be covered by reference to '*unlawful*' in the definition of murder (and manslaughter). It does not need to be spelt out in detail;[66]
- Further, the legal position on many matters has been clarified by legislation - such as the reduction of murder to manslaughter in the case of: (a) diminished responsibility (DR); (b) loss of self-control (LSC); and (c) suicide pact. And, there being no homicide in the case of (a) child under 10; or (b) an insane person, both lacking capacity to form an

[59] McBain, n 3, p 141.

[60] Coke referred to 7 implied (constructive) presumptions of law and the 1957 Act seems to have covered only 2. It should have been more pre-emptory. See McBain, n 3, p 141.

[61] Ibid. See Archbold (2024) 19-19.

[62] McBain, n 3, p 141.

[63] Categorising acts into *licit* (lawful) or *illicit* (unlawful) comes from Bracton (c.1250) which he (a cleric) derived from theology (mainly Raymond de Pennyfort). It was a disaster in the legal sphere since it meant that accidental killing could be murder if the killer had committed an unlawful act. By 1766 this was still argued by legal writers such as Foster (also, a judge) who argued that a thief killing a chicken to steal it (a felony) who missed and killed a person by mistake (i.e. accidentally) was guilty of murder. However, there is no good basis for this theologically originated presumption since it conflicted with babylonian, ancient hebrew and Anglo-Saxon law (which followed ancient hebrew law) as well as earlier English law, that *intent* governed. Further, these laws had presumed intent not in the case of *any unlawful* act, but only in the case of *certain crimes* which involved premeditation, such as poisoning, highway robbery *etc*. from which it was obvious intent could be presumed.

[64] If Goddard CJ had dropped this formulation it would have (it seems) dropped the murder rate by c. 80%, see McBain, n 3, p 138 quoting L Blom-Cooper & T Morris, *With Malice Aforethought. A Study of the Crime and Punishment for Homicide* (2004), p 131. Obviously, if, today, murder is restricted to intentional killing as well as *actual* GBH where there is *recklessness*, this will drop the murder rate - but not by so much, one imagines.

[65] McBain, n 3, p 127.

[66] The crime of levying war is contained in the Treason Act 1351. Elsewhere, I have argued that it should be repealed (it can only apply to fighting in battle to dethrone the sovereign, the last case was in 1746).

intent in law. And that death pursuant to *corporal punishment* does not excuse murder (or manslaughter). Nor death pursuant to *sports* or *sex acts*. Further, murder does not apply to an unborn child (which has been very longstanding).

Thus, the crimes of murder and manslaughter can - now - be easily formulated in legislation (see *Appendix 2*). The only '*fly in the ointment'* is the current, poor quality, caselaw over reckless acts being elevated to murder. However, following legal history - if such are to be taken as murder, *intention to cause* GBH is not enough. The killer must have committed *GBH in fact* and be *reckless* whether death results (i.e. as Stephen J advocated). Thus, there are 2 options (and it does not need long reports to analyse the same):

1. Murder to include killing when GBH has been committed and victim dies, the killer being reckless as to this; or
2. Manslaughter '*upgraded*' to murder if 1 above occurs.

There are no other possibilities since (as noted at the outset) - in law - only 4 forms of killing presently exist *viz*.

(a) intentional

(b) reckless (deriving from gross negligence)

(c) negligent

(d) accidental.

Murder has always included (a) and - since 1828 - accidental killing has not been a crime (in 1828, forfeiture of goods formally ended, although it had long been the case).[67] Negligent killing *per se i*s not a crime. As for '*reckless*' killing, option 1 above is the best option, although - in both cases - it is a '*public policy'* matter whether '*murder*' should be extended to include *recklessness* in any form. Finally, Archbold (2024) notes a couple of old things which can be clarified:

- **Procurement.** Archbold states: *'If any person procures a person who is not of sound mind and discretion [i.e. who is insane or under 10] to kill another, the procurer is guilty of the murder as principal, even if absent at the time*.'[68] I have included wording in *Appendix 1* to deal with this (which would be very rare);
- **Perjury - Exception No Longer Applies**. Archbold states that: 'With one exception, it must be proved that the accused by his own act or omission contributed significantly to the death…The exception is the taking away of a man's life by perjury (i.e. bearing false witness) which is not, in law, murder or, it seems, manslaughter. *Daniel* (1754)…'[69] This statement must be seen in its historical context, in the past, when there was a death penalty and when common informers existed (a category of persons (rogues) who - in return for money - gave false evidence to courts, this, sometimes, leading to the execution of an innocent person).[70] Today, the death penalty has been abolished and a person who commits perjury is covered by the Perjury Act 1911. There is, also, the common law crime of *perverting the course of justice* by giving false evidence, leading the police (and the court) on a false trail. Thus, this scenario is not manslaughter or murder (Archbold is correct).

Finally, sections in a *Crimes against the Person Act* should include the following which are, presently, located in the Offences against the Person Act 1861 ('**OPA 1861'**):

- S 4 deals with *soliciting* murder; [71]
- S 9 deals with murder or manslaughter abroad; [72]

[67] Blackstone (writing in 1765-9) noted that a general acquittal was given for accidental death, see McBain, n 3, p 92, n 844.

[68] Archbold (2024) 19-2.

[69] Ibid, 19-4. Archbold, also, cited the legal writers *East* (1st and only ed in 1803, see 1 East PC 333) and *Blackstone* (1765-9, 4 vols (196n)).

The source of a *perjurer* (false witness) being held guilty of murder is the Bible, Book of Deuteronomy, ch 19, vv 18-21 (life for life), itself reflecting older Babylonian law, see McBain, n 3, p 18 (commandment (law) no 3). Under Roman law, perjury committed in a capital case resulted in the perjurer being punished by death. See McBain, n 3, p 26.

[70] See, for example, the Popish plot of Titus Oates (1649-1705). Oates bore false witness to betray many priests to their deaths.

[71] OPA 1861, s 4 'Whosoever shall solicit, *encourage, persuade, or endeavour to persuade*, or shall *propose* to any person, to murder any other person, whether he be a subject of Her Majesty [HM] or not, and whether he be within the Queen's dominions or not…'. All the words in italics are synonyms for solicit which, itself, means (in modern terminology) '*incites*'.

[72] S 9 **(***murder or manslaughter abroad*).'Where any murder or manslaughter shall be committed on land out of the [UK], whether within the Queen's dominions or without, and whether the person killed were a subject of [HM] or not, every offence committed by any subject of [HM] in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, inquired of, tried, determined, and punished in England or Ireland: provided, that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act.**'** The reference to '*Ireland*' means NI today.

- S 10 deals with trials of murder and manslaughter where the death (or cause of death) only happens in England or Ireland.[73]

In conclusion, today, murder and manslaughter can (easily) be placed in modern legislation, cutting out a large amount of irrelevant legal history.

3. Gross Negligence (Reckless) Killing

One point should be noted in respect of reckless killing where there is (considerable) confusion is whether, generally, in the criminal field, there is a distinction between *gross negligence* and *recklessness*. This is particularly prevalent with regard to killing - where, through misleading usage of these terms - there is the implication that there are 5 ways, at law, as to killing a person *viz.*

(a) intentionally

(b) recklessly

(c) *gross negligently* [74]

(d) negligently

(e) accidentally.

This is not so since (b) derived from (c); it is not a distinct concept. However, it is easy to see how this error arose:

- In ancient times - that is, under Babylonian and Biblical criminal law - accidental and negligent killing were scarcely distinguished. Instead, the 2 main categories were intentional killing and killing in a brawl. Anglo-Saxon law followed Biblical law. So, the same prevailed, Anglo-Saxon laws scarcely referred to *negligence* and this position seems to have prevailed under English law, at least, until a legal text, the *Laws of Henry I* (*Leges Henrici Primi*) in c. 1113;[75]
- However, when Bracton (a cleric and judge) wrote his *On the Laws and Customs of England* (c.1250), following theological writers such as Raymond of Pennyfort, he distinguished *accident* from *negligence*. Not much was made of this, though, since Bracton's main categorization was to distinguish - in the criminal sphere - acts which were *licit* (lawful) from those which were unlawful (*illicit*). Thus, accident - and negligence could be licit or illicit with the result that a killing following an accident (or a negligent act) that was *unlawful*, could be murder.[76] This, disastrous, categorization was not seriously questioned until early Victorian times.

It was, also, in Victorian times when legal writers began to focus (in the criminal field) on the distinct concept of negligence. One of the earliest was Russell - whose *Crimes and Misdemeanors* (1st ed, 1819) became a standard text until its demise in 1964. In his first edition in 1819, he stated:

> where from an action [act], *unlawful in itself*, done deliberately [intentionally], and with *mischevious [malicious] intention*, death ensues, though against or beside the original intention of the party, it will be murder...if such deliberation and mischevious intention does not appear (which is matter of fact, and to be collected from the circumstances) and the act was done heedlessly and incautiously [i.e. negligently], *it will be manslaughter*.[77]

Russell, also, made it clear that negligent, unlawful, acts were manslaughter. Thus, Russell helped create the category of *negligent killing* where the categorization of whether the act was unlawful (illicit) or lawful (licit) began to drop away, since the end result was the same. It did not take long for the Victorian courts to realise that to include *all negligent killing* as manslaughter to be criminally liable was too large in scope (at the same time, the concept of negligence at civil law was expanding). Thus, from c. 1850, adjectives were employed by the criminal courts - the negligence had to be '*culpable'*, '*criminal*' or '*gross*' for it to be a crime. That is, not just simple negligence, but something more.[78]

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[73] S 10 *(provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland).* **'**Where any person being criminally stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or, being criminally stricken, poisoned, or otherwise hurt in any place in England or Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, inquired of, tried, determined, and punished in England or Ireland.' The reference to '*Ireland*' means NI today.

[74] Under Scots law, there is no such category in the case of homicide.

[75] See McBain, n 3, p 37.

[76] In short, 4 categories: (a) lawful accident (pure accident); (b) unlawful accident; (c) lawful negligence (pure negligence); (d) unlawful negligence. See McBain, n 3, p 43. This sub-categorisation in the legal sphere was very unsatisfactory.

[77] McBain, n 3, p 100-1.

[78] This was much helped by accident not being treated as a crime in any form by 1828 and by the 4th report of HM C-rs on Criminal Law in 1839 indicating that - whether an act was accidental or negligent - should be a matter of fact. See McBain, n 3, p 103.

- Such can be evidenced in a run of cases cited in the legal textbooks *viz. Markuss* (1864), *Dant* (1865), *Noakes* (1866), *Finney* (1874) and *Salmon* (1880) [79] with the courts seeking to latch on to a standard epithet. In *Elliott* (1889) the judge (O'Brien J) referred to '*gross negligence, or reckless negligent conduct*', eliding the two;
- Stephen J (in 1863) helped with this since he referred to '*a reckless act'* and a '*wanton [complete] indifference to life in the performance of an act'*; [80]
- However, it should be noted that none of the above were seeking to establish a *distinct* category between '*gross*' and '*reckless*'. It was simply that - as with so much of the common law - legal writers and judges were fumbling (as it were) for '*le mot juste'*. Smith and Hogan (in 1965) - which took over from Russell and Kenny as a standard criminal legal text (along with Archbold) - also, used the word '*recklessness*' when referring to GBH being elevated to murder.[81] So, too, the Criminal Law Commission in 1980;[82]
- For his part, the academic Glanville Williams (in 1983) stated (correctly, it is asserted) that negligence, in the criminal sphere, came to be limited to gross negligence by the end of the 19th century. Williams, also, referred to '*recklessness*'.[83] By his time - in the civil sphere - '*gross negligence'* was being dis-used and the latter word '*recklessness*' employed. Further, '*gross negligence'* was, no longer, being used in the case of battery.[84]

Adomako (1995) sought to bring some clarity to the confusion. However, this case is now 40 years old and things have moved on. Thus, today, it requires legislation to make it clear that:

- the term to be employed in the criminal field should, now, be '*recklessness*'- not '*gross negligence'* [85]
- whether '*recklessness*' was present (as with intent and accident) should be a matter of *fact*;
- '*reckless*' refers to the situation where a person is wantonly (i.e completely, wholly) indifferent to the consequences of his act (i.e. whether it will result in the death of another *etc).*

Thus, the formulation in *Adomako* (1995) as indicated in Archbold (2024) can be simply re-stated in legislation so that there is compatability of meaning for the word '*reckless*' across the spectrum i.e. criminal with civil - and commercial - law, and as between manslaughter and battery. The issue should simply be:

Was the person who killed (A) 'reckless' as to the death of the person who died (B)?

In this, the 2 *dictums* in *Stone and Dobinson* (1977) and *West London Coroner, ex p Grey* (1988), as approved by Lord Mackay LC, are correct in their formulation *viz.*

- *Stone and Dobinson* (1977) *per* Lane LJ 'What the prosecution have to prove is…that the [D's] conduct can properly be described as reckless. That is to say a reckless disregard of danger to the health and welfare of the infirm person.'
- *West London Coroner, ex p Gray* (1988) *per* Watkins LJ 'to act recklessly means that there was an obvious and serious risk to the health and welfare of M….'[86]

It may be noted that the courts have made an absolute dog's dinner of the concept of '*recklessness*' - even senior courts changing about - because they do not know the legal history. The solution is - that like the other 3 legal means of committing a criminal legal act (intentionally, negligently, accidentally) artificial legal constructions should be avoided. The issue should be simply whether - as a fact - A had a '*wanton (complete) disregard as to the consequences of [his/her] act'*. For example, that B would die *etc*. '*Recklessness*' should, also, cover '*escape'* cases where B kills himself (jumps from a car, window *etc*) as a result of violent injury inflicted on him by A (or a reasonable fear of such, induced by A's conduct) where A was reckless as to the consequences. References present in some of the modern caselaw - to terms such as '*dangerous'* - add nothing. Further, the injury must be VSI or SI (i.e.

[79] Thus, judges referred to '*culpable rashness'*, '*gross negligence'*, '*complete negligence'*, '*criminal act'*. See McBain, n 3, p 174.

[80] McBain, n 3, p 107. Doubtless, Stephen J was aware of the OPA 1861, s 35 (*drivers of carriages injuring persons by furious driving*) which referred to '*wanton or furious driving or racing'*, the words '*wanton*' and '*furious*' meaning '*reckless'* (i.e. not just negligent - or grossly negligent - driving, but wholly '*care less'* by deliberately indulging in racing).

[81] Ibid, p 118. From 1902-65, the intention of legal writers in the criminal sphere was to try and get rid of '*lawful*' and '*unlawful*' acts generally (effectively achieved with the Homicide Act 1957 - although see *Vickers* (1957)).

[82] Ibid, p 122, though Law Commission did not help by using expressions such as '*merely reckless, even gravely reckless'* being, yet more, poor terminology and seeking to categorise even recklessness.

[83] Ibid, pp 124-5.

[84] In 1996, the Law Commission issued a report on Involuntary Manslaughter proposed separate crimes of '*reckless killing'* as well as '*killing by gross carelessness*', failing to realise they were the same (due to a failure to analyse their legal history).

[85] More modern legislation does get this correct e.g. Serious Crime Act 2015, s 75A (*strangulation or suffocation*) refers to 'intended to cause B [serious harm, in this context] or…was reckless as to whether B would suffer the same'. Exactly.

[86] Archbold (2024) 19-124.

GBH or ABH, if less than this, it would not be reasonable in terms of the escape response). Also, analysing whether the result could have been '*reasonably foreseen'* is unhelpful. The test should be an objective one *viz.* in the matrix of facts - and on an objective basis - was: (a) A's conduct *reckless*; and (b) was such *recklessness* a '*substantial cause'* of B's death. 3 final points:

- **Duty of Care.** At present, manslaughter for recklessness (gross negligence) is formulated on the basis of a duty of care. This should be discarded, save in the case of corporate manslaughter where it is reasonable since one is looking at an event with the context of employment. The only test (as with intent) is - was A acting '*recklessly*' with regard to the death? Otherwise, there is the inclusion of an (unnecessary) additional pre-requisite (duty of care). One that undermines (or detracts from) the basic pre-requisites necessary for the crimes of murder and manslaughter;
- **Involuntary Manslaughter**. This category is unnecessary. So too, the sub-division of manslaughter into: (a) unlawful act manslaughter; and (b) manslaughter by gross negligence. The former is simply a '*hangover*' from Bracton's formulation of '*licit'* (lawful) and '*illicit'* (unlawful) acts, dispensed with by the Homicide Act 1957- a formulation which has given rise to presumptions of law which have caused so much confusion in the legal history of homicide. No wonder why Archbold states '*The difficulty is to identify the elements which may make the killing unlawful*'. However, Archbold, then, quotes cases *pre* the Homicide Act 1957, which explains why such is so difficult! Also, Archbold re-formulates '*reckless*' by using another word '*dangerous*' when the same simply confuses things.
    - Further, if one considers the cases cited by Archbold under this heading, *post* 1957, it is apparent that words such as '*truly criminal'* (see *Brown* (1994)) are closely allied to recklessness/gross negligence (indeed, '*culpably criminal'* was used in that context).[87] Also, cases such as *Lamb* (1967), *Kennedy (no 2)* (2007), *Rebelo (no 1)*(2019), *Meeking* (2012), *P* (2005) *etc* all show that '*reckless*' is the better pre-requisite, rather than trying to develop wide and uncertain concepts such as '*dangerous'*;
    - In short, horseplay, jokes *etc* should only be criminal (manslaughter) - not when the victim (B) dies accidentally or negligently or through '*rough horseplay'* - but only when the killer (A) was wholly indifferent (reckless) as to whether B died or not ;[88]
    - As for *sports*, it is much better to put the position in legislation *viz.* a person (B) does not consent to being recklessly killed (or having GBH/ABH recklessly inflicted) but does consent to some degree of physical injury;
    - The position as to *corporal punishment* is the same, which I have done, see *Appendix 1*. Part of the problem, is that no attempt has been made by counsel (or legal writers) to cite the legal history;[89]
- **Medical Condition of Victim**. In the case of murder, the '*intention*' to kill or the death being a '*substantial cause*', should be unaffected by the medical condition of the victim who might - due to a medical condition - die in an accelerated fashion or not respond to medical treatment (save where these pre-requisites no longer apply due to a NAI (*novus actus interveniens*)).[90] The same should apply to manslaughter (*recknessness*). Thus, for example, if a burglar breaks into an elderly woman's home, the issue should not be her physical condition - for example, if she dies from heart failure (exacerbated by a pre-existing condition) - but whether the conduct of the burglar was - having regard to the matrix of facts - reckless.

In conclusion - in the criminal sphere - accidental and negligent killing does not apply and legislation should make this clear. Legislation should, also, make it clear that intentional killing is murder (and has been since Babylonian times) and reckless killing is manslaughter. In the case of the latter, it is pointless reviewing the case in terms of whether the act was lawful or unlawful per se (a la Bracton) or dangerous. Instead, the issue should be the mens rea of the accused.

For example, if a person breaks the neck of another in the game of rugger (a game which is lawful and not per se dangerous) the issue should be - did the same do so intentionally (thus, murder) or recklessly (thus, manslaughter)? Otherwise, it is simply a tragic consequence of playing a sport which, necessarily, involves a high degree of physical contact (so too, jousting in ancient times and boxing, football, ice hockey and fencing in modern times). Otherwise, the result will be to (effectively) outlaw all contact sports, for fear that a one in a million death might occur. That is not to say, that a civil remedy cannot be availed of in such circumstances. Also, legislation can make it clear that sports should be played according to the rules. For example, if persons

[87] See n 79.

[88] Thus, for example, Lamb (1967) (*pulling trigger of a revolver in horseplay*) and P (2005) (*pushing person off bridge in horseplay*) are cases, in reality, of thoughtlessness (tragic accident) not intent or recklessness. See Archbold (2024) 19-114.

[89] Archbold (2024) 19-114.

[90] This applies especially to a third party such as a bystander. This has never been the law (as far as I aware) under legal history. Thus, *M (J) and M (S)* (2012) is an unwarranted extension.

intentionally fence without face guards - or ice hockey players without guards and protection (or boxers without gloves) - this should (if relevant to the death) be a factor in concluding that there was recklessness.[91]

4. Non-Accidental Death of Child (or Vulnerable Person)

Until recently, there were only 2 categories of homicide *viz.* murder or manslaughter. In 2004, the Domestic Violence, Crime and Victims Act 2004, s 5 made it a crime to cause the non-accidental death of a child (or a vulnerable adult). Archbold (2024) describes the purpose of this.[92] However, at present, this crime is poorly drafted and it fits in badly with murder and manslaughter. Thus:

- ***Confusing References to Parties***. The present drafting is very confusing as to who is who. This is not helped by the accused being referred to as D (defendant), the victim as V and no letter is ascribed to any third party (usually the 'other' parent). In much other criminal legislation - ABC is used (A for the accused, B for victim and C for a third party (who is often not involved - therefore, reference is not required). There should be standardization (i.e. this Act should have adopted ABC). Further, by using ABC, much text can be cut out;
- ***Much Surplusage***. There is much surplusage. A number of definitions are not required and (obviously) the definition of '*vulnerable person*' should be the same as in other criminal legislation (such as sex crimes);
- ***Confusing Start.*** All other crimes against the person can be set out: 'It is a crime if a person (A)…'. Here, the start is the wrong way round;
- ***Mixing Up Death and GBH.*** The crime mixes up 2 things. One where B suffers death (homicide). The other where B suffers GBH (VSI) but does not die. In any consolidation, the latter (being battery) should be set out separately, to make both crimes clearer and to put them in their proper legal order;
- ***Mixing up 2 separate Crimes***. These should be set out in order to make them clearer. I set them out below;
- ***Failure to refer to other Relevant Legislation***. It is obvious that the crime of child cruelty is important, since the '*unlawful*' acts described therein apply to children. Thus, the CYPA 1933 Act, s 1 refers to a situation where a person over 16 with responsibility for a child under that age '*wilfully [i.e. intentionally] assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature).*' This section should be repealed and incorporated into s 5, under reference to an '*unlawful*' act since it will cover many of the instances where s 5 otherwise would apply in the context of a child's death;
- ***Unlawful Act***. The definition of the same is far too wide referring to one that would '*constitute an offence'*. This could cover all crimes, including the most minor. Such cannot be right. Thus, the same should be restricted;
- ***A's Own Perceptions.*** At present, reference is made to A's foresight, as well as A being aware (or ought to have been aware). These are contrary to other criminal legislation which looks at the position from that of a reasonable person which (it is asserted) is much better.

In short, the gist of s 5 appears to be 2 scenarios, as modernised:

(1) ***Case 1***. It is a crime if a person (A):

(a) was a member of the same household as B with whom *A had frequent contact* [93]

(b) B dies (*or suffers VSI*) [94] as a result of the unlawful act of A [95] and

(c) *at the time of B's death, there was a significant risk of [VSI] (the 'risk') being caused by A.*[96]

(2) ***Case 2.*** It is a crime if a person (A):

(a) was a member of the same household as B with whom A had frequent contact

(b) B dies (*or suffers VSI*)[97] as a result of the unlawful act of another person (C) to which (a) also applied and

[91] What is worrying in all the cases on so-called '*involuntary manslaughter'* the judgments are unduly prescriptive, trying to make legal propositions out of fact scenarios and making unnecessary extensions to the basic pre-requisites, without need.

[92] Archbold (2024) 19-170 'These measures were enacted to tackle the problem encountered where a child or vulnerable adult died in A's and/or B's household but there was not a sufficient case for murder or manslaughter against A or B because although the prosecution could say it was very likely one of them caused the injuries, in the absence of evidence that they acted jointly there was no admissible evidence implicating one of them rather than the other.'

[93] Why is this necessary? It should not be.

[94] This scenario is different and should be dealt with separately under the law relating to GBH.

[95] In case of 2 it is the unlawful act of C (usually, the other parent).

[96] Why is this necessary? It should not be.

(c) at the time of B's death, there was a significant risk of [VSI] (the '*risk*') being caused by C and

(i) A was (or ought to have [reasonably] been) aware of the risk and

(ii) A failed to take steps [a reasonable person would have taken] to protect B from the risk *and*

(d) B's death (or [VSI]) occurred in circumstances of the kind that A foresaw (or ought to have foreseen).[98]

(3) ***Interpretation***. '*B*' refers to: (a) a child under 16; or (b) a vulnerable adult.

Both Case 1 and Case 2 should be *manslaughter*. There is no need to have another category (death of a child under 16 or vulnerable adult). Further, it is possible to improve, and considerably simplify, the above wording in a modern Crimes against the Person Act, see *Appendix 1*.

In conclusion, s 5 is a classic instance of confused drafting without regard to (knowledge of) overall criminal law. This crime should not be a distinct crime, as at present. Rather, it should be manslaughter.

5. Threat to Kill

The OPA 1861, s 16 (*threats to kill*) states: '*A person who without lawful excuse [i.e. unlawfully] makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence*…'. This crime can be more simply - and intelligibly - be stated as follows:

1. Threat to Kill

(1). It is a crime if a person (A):

(a) unlawfully

(b) threatens to kill another person (B) or a third person (C)

(c) A intending B to fear that

(d) A will kill B (or C)

In **7** below, I argue that the crime of *assault* (i.e. threatened battery) should be abolished, since it now covered (more accurately) by the term '*harassment*'. Naturally, s 16 above (which is a form of assault - being a *threat* not carried out) should be preserved, given the seriousness of the threat. However, this crime being one of *harassment* (intimidation) at base, should be placed in legislation under the title of such (it is different from the crime of *conspiring* or *inciting* another to murder (see OPA 1861, s 4) which, also, should be preserved but which is not a threat and, thus, not an example of harassment.

In conclusion, this crime of threatening to kill should be consolidated in a Crimes against the Person Act, under the title 'harassment'.

6. Soliciting to Murder (Incitement)

Presently, the OPA 1861, s 4 states:

'Whosoever shall solicit, encourage, persuade or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of [HM] or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanour…'

The words '*encourage*', '*persuade*', '*endeavour to persuade'* and '*propose'* are all synonyms for '*solicit*'- they do not have a technical legal meaning in themselves. Further, '*solicit*' is an older term for what we now call the crime of '*incitement'* (today '*solicit*' is, also, much less common in general language).[99] There are relatively few cases which Archbold cites for this crime, many of which are Victorian.[100] Thus, a modern formulation of s 4 would be:

(1) It is a crime if a person (A):

(a) incites

(b) another person (B)

(c) to murder a third person (C).[101]

(2) '*incites*' includes [ordering], encouraging, persuading, inviting.

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[97] See n 93.

[98] Where a reasonableness test is substituted, (d) is otiose.

[99] Archbold 33-74 and 33-86 correctly refers to '*soliciting or inciting crime'*. They are synonyms, one of much older pedigree.

[100] Archbold (2024) 19-171 cites cases such as *Banks* (1873) 12 Cox 393; *Ransford* (1874) 13 Cox 9; *McCarthy* [1903] 2 IR 146; *Shephard* [1919] 2 KB 125; *Krause* (1902) 66 JP 12; *Bourtseff* (1898) 127 CCC Sess Pap 284; *Antonelli & Barberi* (1905) 70 JP 4. Also, *Hunter* [2007] EWCA Crim 3424; *Bilal Ahmad* [2012] EWCA Crim 959, *Abu Hamza* [2006] EWCA Crim 2918; *Winter* [2007] EWCA Crim 3493; *El Faisal* [2004] EWCA Crim 456.

[101] Inciting a person to self-murder (i.e. to commit suicide) would not be covered by this crime.

That said, it would seem much better than making this a separate crime - as the Victorians did - to let this be covered by the general law of incitement, making it clear that '*incitement*' includes '*encouraging*', '*persuading*' and '*inviting*'. Even more so, it should include the concept of '*ordering*' (commanding) a person to murder (such as a mafia boss ordering this). In times past, this was covered by the old word '*procures*'; however, such is not used in ordinary (or legal) speech today and is very opaque in meaning, see **10**.

7. Battery (Violent Injury)

In Anglo-Saxon times, inflicting certain types of non-consensual (i.e. violent,[102] unlawful) bodily injury on another was a crime, unless there was a defence. The crime was called a '*battery'* from the Anglo-Saxon word '*beatan*'- meaning to beat - and '*batt[e]*' - meaning a club.[103] The punishment for this crime was a fine (a *wite*) to the king for disturbing his '*peace*' (i.e. breaking the criminal law) as well as the payment of compensation (*bot*) to the victim. The scale of the fine in Anglo-Saxon times depended on the seriousness of the batttery and these fines were set out in a Table,[104] so things were very clear. If not in the Table the injury inflicted was not a crime. It is, also, to be remembered that most Anglo-Saxons were illiterate - including judges. Thus, judges were '*law speakers*' (*asegas*) - they memorized the law - with the result that the law changed little over hundreds of years.

- **Battery & Assault**. When the Normans defeated the Anglo-Saxons in 1066 and William I (1066-87) became king, the tendency was to use latin terms. The latin translation of *'battery'* was '*assultus*'- whose basic meaning was that of an attack.[105] Also, the Anglo-Saxons did not punish '*threatened batteries.'* There had to be infliction of physical harm. However, from the 13th century, the Normans did (a good revenue raising idea because of the fines) and, problematically, the term used for a threatened battery was '*assault'.* Hence, the confusion today about these words;
- **Categorisation.** Even more confusion was added when English law started to categorise injuries into 2: (a) grevious bodily harm (gbh); and (b) common assault. The word '*grevious*' is the English translation of the latin '*atrox'* (atrocious), meaning that the injury had to be very serious (in Anglo-Saxon times, this referred to wounds by the inch, hacked limbs, gouged eyes *etc* - injuries which were *life threatening*). For its part, the category of '*common assault'* covered injuries which were less serious than GBH, but they had to, also, be *serious, not minor*.[106] Indeed, to prevent the royal law courts being clogged up with minor batteries, by the mid-13th century (if not before) it was provided that a person could sue civilly instead (by way of an action for trespass) for minor injuries - which civil remedy still exists.[107]

The division of all batteries into 2 categories continued until 1861 when it felt that '*common assault'* was too wide to cover any bodily harm which had not inflicted a very[108] serious injury (GBH). Thus, a new category - '*actual bodily harm'* (ABH) - was introduced. The term was not well chosen since '*actual*' meant *'serious'* bodily harm. It was also made clear by the courts that ABH did not cover any '*trifling*' or '*transient*' injuries.[109] This was sensible since - otherwise - the 3rd category (level) of unlawful (violent) bodily injury - that of '*common assault'* - would have been wholly redundant. The result is that, today, there are 3 categories of unlawful (non-homicide) bodily injuries, *viz*: (a) grevious [i.e. very serious] bodily harm (GBH); (b) actual [i.e. serious] bodily harm (ABH); and (c) common assault. As to these:

> **GBH**. The term was modernized in the case of *Brown* (1994) when Lord Templeman stated '*[GBH] means simply bodily harm that is really [very] serious*…[110] This is correct. However, it would have been helpful if Lord Templeman had used the word '*very*' instead of '*really*' since such would have been clearer. Further, today, GBH should mean - if murder is to include recklessness - that there is a *substantial risk of death*. That is, that the *injury is life threatening.* Presently, the OPA 1861 refers to GBH in 3 sections - *viz* ss 18,[111]

[102] Implicit within this word is the connotation that the conduct is unlawful (i.e. a crime).

[103] See McBain, n 1, p 64, See also the French '*batterie*' (beating), '*battre'* (to beat).

[104] Ibid, pp 142-3.

[105] Likely, the root of all this was the Hebrew word '*nakah*'(*nagaph*) meaning to strike, smite (with the implication of to '*attack*') since Anglo-Saxons followed the Bible in their dooms (and the Normans were, originally, Saxons), see McBain, n 3, p 19, n 126.

[106] This categorization was latent in the Anglo-Saxon Table, since some injuries bore a lesser fine. However, all had to be serious.

[107] See McBain, n 1, p 52 quoting the legal writer (and, likely, judge) Bracton c. 1250 (minor, trifling injuries excluded from the criminal law).

[108] '*Really*' has been used by the courts as a synonym for '*very'* in the context of GBH, see n 110. However, '*very*' is more clear.

[109] See Archbold (2024) 19-247 (*trifling or transient*).

[110] *R v Brown* [1994] 1 AC 212.

[111] S 18 (*shooting or attempting to shoot, or wounding with intent to do [GBH]*). **'**Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any [GBH] to any person, with intent, to do some [GBH] to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person…'.

20[112] and 23.[113] However, these sections are very confused and they do not '*gel*' well - the reason being that the OPA 1861, generally, was an attempt to consolidate a large number of more antiquated provisions on bodily harm. Further, the word '*maliciously*' means *'intentionally'*.[114] Thus, this latter word being more intelligible, reference should be made to it. Taking out the unnecessary verbiage in the 1861 Act, it is GBH if a person, unlawfully and intentionally, on another person (*italics supplied*):

- by any means…*causes [i.e. inflicts] GBH* (s 18);[115]
- wound or *inflict any [GBH]* (s 20);[116]
- administer…any poison or other destructive or noxious thing…so as to *inflict upon such person* [GBH] (s 23).

It can be seen that these 3 sections mean the same thing. They cover the situation where a person, unlawfully and intentionally *inflicts* GBH on another (the references to wound, weapon and poison are just to examples. Thus, they are not needed in a modern re-statement since they are *examples*, not *pre-requisites*). Given this, a modern formulation is simple (and the 1861 Act reflects the position from under early English law which has never changed). It is possible to state as follows:

1. **Violent Injury**. (1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally (or recklessly) [117]

(c) inflicts[118]

(d) physical injury

(e) on another person (B).

The above wording, '*tees up'* with manslaughter and murder, which have always been examples of *aggravated* battery (both, also, being unlawful and where physical injury is inflicted to the point of death). The interpretation *vis-à-vis* murder and manslaughter, also applies to physical injury (save for (e) below, since there is no corpse). Also, in the past, reference was made to '*physical (bodily) injury'* - not to '*harm*'.

2. **Interpretation**

(1) In (1)(d) the injury may be:

(a) by act or omission;[119]

(b) direct or indirect;

(c) random;

(d) by transferred malice;

(e) held to have occurred whether B's body is found or not.

These are (and should be) identical to murder and manslaughter, which are aggravated batteries - save that (e) is irrelevant. Further - in the context of modernizing the antiquated 1861 Act - other useful changes can be made, reflecting the huge advances in medicine in the interim. These are:

- ***GBH, ABH and Common Assault reflect body injuries, the categorization of which is a medical - not a legal - matter***. In earlier times, there were few doctors and, therefore, lawyers and the courts simply guessed as to whether the violent injury fell into the categories of GBH, ABH or common assault. However, this is sheer amateurism and, today, it should be for a forensic medic working with the police (or the CPS) to *certify* into which category the injury falls - in order to save court time and to ensure consistency in the

[112] S 20 (*inflicting bodily injury, with or without weapon).* **'**Whosoever shall unlawfully and maliciously wound or inflict any [GBH] upon any other person, either with or without any weapon or instrument…'

[113] S 23 **(***maliciously administering poison, &c. so as to endanger life or inflict [GBH]*). **'**Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person [GBH]…'.

[114] This is a good example of a word changing its meaning over time in a legal context. Orginally, malice (hatred) was a moral (theological) term of opprobrium, see ns 8-9, which added nothing legally. However, the word came in the English legal context to mean (as here in the 1861 Act) having an '*evil intention'*, with greater and greater stress on the latter word.

[115] At present, s 18 says '*maliciously…with intent'*, but this is the same thing. It also says '*wound or cause'*. However, '*wound*' is simply a method of causing, and need not be referred to. Further, '*cause*' means - in more modern terms - '*inflicts*'. Finally, '*with intent to resist or prevent the lawful apprehension or detainer of any person'*. This is simply a reason, out of very many (i.e. an example) and it does not need to be stated.

[116] At present, s 20 (correctly) refers to '*inflicts*' not '*cause*'. Further, the words '*either with or without any weapon or instrument'* add nothing.

[117] '*Recklessly*' should be included so as to deal with murder where it includes recklessness.

[118] See n 115.

[119] Violent injury can be effected by omission (e.g starving a person).

law. Otherwise, it is obvious that there will be a large degree of disparity between different police officers and prosecution lawyers. The criminal law must move on from 1861;

- ***Modern Terminology must be Employed***. Modern terminology should be employed. Thus '*grevious*' should be '*very serious'* and '*actual*' should be '*serious*' and '*common assault*' should be '*assault'* (*'common'* no longer applies if this injury is made legislative anyway*)*;
- ***GBH must be Life Threatening***. The older legal concept of GBH should apply. That is, the injury must be life threatening.[120] *This is especially so, if GBH is elevated to murder*. It cannot be just if a less serious injury (or an assault) is elevated by presumption of law to murder, if never intended by the assailant. Further, the civil law remedy should still apply to cover minor injuries, to prevent the criminal courts being clogged up (at the taxpayer's expense). More importantly, a Table (in a SI) should set out the nature of such injuries with medical precision - to prevent police and court time being wasted. This would save a huge amount of taxpayer money. Thus, a *Crimes against the Person Act* should provide something to his effect:

3. **Categories**

(1) There are 3 categories of violent injury in s 1 (see above):

(a) Very Serious Injury ('**VSI**')

(b) Serious Injury ('**SI**')

(c) Assault [121]

(2) VSI means injury which is life threatening.

(3) A Table in a statutory instrument (SI) shall set out the nature of the injuries falling within (1)(a)-(c).

(4) The police shall provide the prosecution and the court with a medical certificate ('**MC**')

(a) indicating the category in (1)

(b) which MC shall be:

(i) completed by a qualified police forensic medic or doctor and

(ii) accompanied by police (or hospital) photos of the injury.

(5) The basis for prosecution shall include the evidence in (4)(b).

Historically, the defences for homicide and violent bodily injury have been the same. This has been lost sight of among the mass of piecemeal legislation. However, this can be easily clarified in a modern Act. Thus, just as it is not homicide - by way of exception - if the killing was *accidental* or *negligent* or effected *by a child under 10* or an *insane* person - this should apply in the case of violent injury (as it presently does). Also, diminished responsibility (DR) and loss of self control (LSC) should (probably) apply to violent injury as they do to homicide. Finally, defences of: (a) self defence; and (b) *bona fide* medical treatment should apply (but not *assisted dying*). Further, there are 4 instances where it should be made clear that VSI and SI (i.e. very serious injury and serious injury) do not apply to consent by the victim, in the case of: (a) sports; (b) corporal punishment; (c) consensual sex acts; and (d) consensual body mortification. Thus, no consent should apply in the following cases:

(1) **Contact Sport or Game.** A person shall be presumed to impliedly agree to:[122]

(a) a reasonable degree of physical injury

(b) in playing a contact sport (or game);

(c) which is lawfully played;[123]

[120] It is asserted that *Cunningham* (1982) got this wrong, through lack of review of legal history. Similarly, it is not the weapon used but the injury produced that is important in the legal context (cf. *Janjua* (1999)). See, generally, Archbold (2024) 19-18.

[121] It may be that this category is no longer needed and that this can be left to the civil law. If so, this would result in a huge saving to the taxpayer and a great reduction in more minor cases going before the criminal courts.

[122] Kenny (see n 34) in 1902 stated: 'ordinary fencing, and similarly boxing, wrestling, football and the like are lawful games if carried on with due care. Everyone who takes part in them gives, by so doing, his implied consent upon himself of a certain (though a limited amount) of bodily harm. *But no one has the to consent to the infliction upon himself of an excessive degree of bodily harm, such harm as amounts to 'maiming' him [i.e. GBH]; and thus his agreement to play a game under dangerously illegal rules will, if he be killed in the course of a game, afford no legal excuse to the killer*…Of course even the most lawful game will cease to be lawful as soon as anger is imported into it; and the immunity from criminal liability for those engaged in it will consequently at once disappear.' The words in italics would seem useful.

[123] See *Barnes* [2004] EWCA Crim 3246 ('*within the rules and practice of the game'*). Also, Archbold (2024) 19-234. Thus, it would seem that bare knuckle fighting (i.e. without gloves), fencing without a visor, football with sharpened metal studs, kick boxing outside the rules, ice hockey without protective head and body armour *etc*, should be treated as unlawfully played (even where assault only is occasioned) on the grounds of

(d) however (a) shall not include VSI or SI.[124]

(2) **Corporal Punishment**. Corporal punishment of a child under [16]:

(a) by a parent

(b) shall not include VSI or SI.[125]

(3) **Consensual Sex Acts.** Consensual sex acts shall not include VSI or SI.[126]

(4) **Consensual Body Mortification**. Consensual body mortification:

(a) shall not include VSI or SI; [127] and

(b) the following shall be treated as VSI on public policy grounds, the removal of an:

(i) eye, nose, limb or genitalia,

(ii) other than for *bona fide* medical purposes.

(c) the following shall be treated as SI on public policy grounds:

(i) splitting of the tongue

(ii) removal of an ear or nipple [128]

(iii) tattooing of the face or the

(iv) branding of a person.[129]

Also, today, since there is real uncertainly to how a person can react in the case of children *etc*, it would seem appropriate to clarify the situation *viz.*

(5) A person may use reasonable force to prevent B from self-harm (or harming another) if B is:

(a) a child under 18

(b) a vulnerable person (VP)

(c) intoxicated

(d) suicidal

(e) mentally unwell or

(f) it is otherwise reasonable in the circumstances.

Further, a situation can arise where a mother (B) with an unborn child, incurs violent injury.[130] Provision should be made for this, if A was aware (or should have been aware) of the same. Thus:

(6) The crime in (1) may apply to an unborn child of B (being C) if:

(a) such was known to A or

(b) a reasonable person would have so perceived and

(c) C was, at least, [28 weeks] old.[131]

In conclusion, the law of battery can be (easily) set out in modern terms and 'tee'd up' with that of homicide, as happened in older law (homicide simply being an aggravated battery).

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public policy. It may be noted that, in olden times, unlicensed jousts were prohibited by order of the sovereign, given the high risk of death, serious injury.

[124] i.e. B agrees to intentional (or reckless) *assault* in the case of a contact sport such as rugby or ice hockey - but not to serious (SI) or very serious injury (VSI). See also Archbold (2024) ch 19-233 to 235 and *Barnes* [2004] EWCA Crim 3246.

[125] See Children Act 2004, s 58 (3) (*excludes GBH and ABH*).

[126] See Archbold (2024) 19-235 and cases referred to. Also, Domestic Abuse Act 2021, s 71 *(consent of serious harm for sexual gratification not a defence*).

[127] See Archbold (2024)19-235. It may be noted that it was a crime in Coke's time for a person to mutilate a limb in order to beg.

[128] At present (i)-(iv) are a '*grey*' area. Thus, legislation should clarify this.

[129] Cf. *Wilson (A)* [1996] 2 Cr App R 241. See also Archbold (2024) 19-235.

[130] Homicide (murder or manslaughter) never applied to an unborn child since it was not held (as Coke noted) to be *in esse* (in being). Further, if now applied to an unborn child as a policy decision, an independent intention (or recklessness) to kill the unborn child and any act of A being a '*substantial cause of death'* would have to be shown (i.e. that murder or manslaughter apply to the unborn child independent to the mother).

[131] See Infant Life (Preservation) Act 1929 (*prima facie proof that child capable of being born alive*). This would seem necessary since there should be evidence that the child was capable of being born alive anyway.

8. Assault and Battery - Specified Persons - Obsolete Crimes

At present, the law sets out various crimes relating to assault and battery relating to specific persons *viz*.

- Assaulting a Church of England priest (OPA 1861, s 36);[132]
- Assaults an officer saving wreck (OPA 1861, s 37);[133]
- Neglect or Assault of Apprentices (OPA 1861, s 26);[134]

For the reasons given in a prior article on assault and battery,[135] the above antiquated sections are unnecessary or obsolete and the general law should apply (see also **18**, where the above are discussed in more detail). There are, also, the following (those *indented* do not refer to a crime as such but to the degree of force that may be used to arrest, which should be set out in a Police Act):

- **Assault with intent to resist arrest**. The OPA 1861, s 38 (*assault with intent to commit felony, or on police officers etc*) states that it is a crime: '*whosoever shall assault any person with intent to resist or prevent the lawful apprehension or detainer [136] [i.e. arrest] of himself or of any other person for any offence*…'. This section (and its precursors) existed when the modern police was still developing (since 1829) and there were still local police forces as opposed to a national one (local police forces ended in 1898). In such times, public citizens aiding of the police (in part required by the common law) was more constantly practiced. Today, this s 38 should be repealed for 2 simple reasons:

  (a) the general law should apply (i.e. self defence or defence of another). Not least, because the wording in s 38 is so wide and hazardous, that a citizen would have to be very cautious.[137] Further, the person '*arrested*' may be wholly innocent and unaware of any offence (indeed, thinking that he is being falsely imprisoned or kidnapped or that such is the result of vigilante activity);

  (b) the Police Act 1996, s 89 (see below) is also applicable in most instances where s 38 applies, where a police officer ('**PO**') is, also, involved;

  - **Prevention of Crime and Use of Force**. The CLA 1967, s 3 (*use of force in making arrest etc*) states: '(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting *or assisting* in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. (2) [ss] (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the [ss] is justified by that purpose.' This s 3 should be combined with the PACE 1984, s 117 (see below).
  - **PO - Reasonable Force**. The PACE 1984, s 117 (*power of constable to use reasonable force*) states 'Where any provision of this Act (a) confers a power on a [PO]; and (b) does not provide that the power may only be exercised with the consent of some person, other than a [PO], the officer may use reasonable force, if necessary, in the exercise of the power.'

- **Assaults on Emergency Workers**. The Assaults on Emergency Workers (Offences) Act 2018, ss 1 (*common assault and battery*) states: '*The [s] applies to an offence of common assault, or battery, that is committed against an emergency worker acting in the exercise of functions as such a worker'*. S 2 makes it a crime to effect a common assault or battery on the same. S 3 expressly includes a '*constable*' in the meaning of emergency worker. The wording in this Act is not good since a '*common assault'* is a '*battery*' and always has been - all of GBH, ABH and common assault being batteries;
- **Assault on PO.** The Police Act 1996, s 89 (*assaults on constables*) states: (1) Any person who assaults a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence... (2) Any person who resists or wilfully [intentionally] obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence…[138]
- **Racially or Religiously Aggravated Crimes**. The Crime and Disorder Act 1998 (*racially or religiously aggravated assaults*), s 29 states: '(1) A person is guilty of an offence under this [s] if he commits (a) an offence under [s] 20 of the [OPA 1861] (*malicious wounding or grievous bodily harm*); (b) an offence under [s] 47 of that Act (*[ABH]*); (ba) an offence under [s] 75A of the Serious Crime Act 2015 (*strangulation or suffocation*); or (c) common assault, which is racially or religiously aggravated for the purposes of this [s].

[132] The battery wording in s 36 is '*shall strike or offer any violence to'*.

[133] The battery wording in s 37 is '*shall assault and strike or wound any magistrate…etc'*.

[134] The battery wording in s 26 is '*shall unlawfully and maliciously [i.e. intentionally] do, or cause to be done, any bodily harm to any such apprentice or servant…*'.

[135] See McBain, n 1, pp 130-4.

[136] This obsolete wording is now restricted to arrest.

[137] It says for any *'offence'*. This could mean a parking ticket violation, dropping litter, an arrest on civil process. See *Self* (1992) 95 Cr App R 42 (must be proved person assaulted had right to apprehend (detain) the defendant for any offence) and Archbold (2024) 19-336c.

[138] See also Crime (International Co-operation) Act 2003, s 84 (*assaults on foreign officers*).

As can be seen, although the position seems very confused by reason of being set out in distinct legislation - the following are *aggravated assaults* (batteries), *viz*.

- assaulting any person with intent to resist *arrest* (1861 Act, s 38);
- assaulting *a PO* in the execution of his duty (or person assisting) (1996 Act, s 89);
- resisting (or obstructing) *a PO* in the execution of his duty (or a person assisting) (ibid);[139]
- battery/common assault against an emergency worker (2018 Act, s 2) which includes a PO;
- racial, religious or sex discrimination aggravation in the case of GBH (or ABH or common assault or strangulation or suffocation) (1998 Act, s 29);

It is asserted that none of the above are necessary. The general law will do, today, with the *aggravation* going to the *sentence* which should be set out in a Table. Otherwise, the law becomes a mess, because a separate caselaw develops, detracting from the general law on battery. Thus, all that is needed in modern legislation is the following:

> (7) If violent injury in (1) occurs to:
>
> (a) a PO acting in the execution of his duty (or a person assisting a PO in such) or
>
> (b) an emergency worker or
>
> (c) in the course of religious, racial or sex orientation hatred
>
> an aggravated sentence shall apply.

This section would cover the Police Act 1996, Assaults on Emergency Workers (Offences) Act 2018 and the Crime and Disorder Act 2018, merging them into 1 section.

- The OPA 1861, s 38 (*assault with intent to assist arrest*) should be repealed, the general law applying;
- A section in a Police Act should cover the PACE 1984, s 117 and the CLA 1967, s 3 referred to above. That is, a police officer, acting in the execution of his duty (and any person assisting the same) may use reasonable force.[140] '*Duty'* would include when a PO is *arresting* a person. As well as when a PO is *obstructed*.

In conclusion, the law of battery can (easily) be set out in a Crimes against the Person Act, following that on homicide. And, aggravated batteries (against a PO etc) should go to the sentence. There is no need for them to be separate crimes. This will only create divergent caselaw. Further, they should be very limited.

9. Assault (Threatened Battery)

As previously mentioned, the word *'assault'* is used - unhelpfully - to categorise *threatened* batteries, such as to threaten to inflict GBH, ABH or common assault on a person, but not to actually effect this. Regrettably, legislation - and some legal writers - have failed to note this.

- Another problem with this is that, in modern times, the crime of harassment has developed to cover the same ground, since the basis of the two terms is identical - a *threat*, the concept deriving from menacing ('*menaces*' in Anglo-Norman) this being a form of *intimidation*;
- To put it another way, both *assault* and *harassment* are aspects of *intimidation*, by means of *threat* (as is blackmail, an old crime being the intimidation of a person by way of threat). This can, and has, resulted in confusion under English law, since these 2 separate crimes are covering the same subject matter.

The simplest solution is to abolish *assault* at common law leaving a threat to *violently injure* another being a form of harassment along with stalking and a threat to kill.

In conclusion, the law of assault (threatened battery) should be abolished and the same should be treated as harassment.

10. Conclusion - Consolidation of Law on Homicide and Battery

In early times, the law on homicide and on battery was incredibly simple, as it should be. Homicide was simply an aggravated battery, meriting a more severe sentence. All the complication and confusion in the law has arisen through using Anglo-Saxon terms (*battery*) and their latin translation (*assault*) indiscriminately. These terms are no

[139] The 1996 Act, s 89 seeks to create 2 separate crimes when only one is required. Thus, ss 1 deals with assaulting a PO '*in the execution of his duty*' while ss 2 deals with *resisting* or *intentionally obstructing* a PO in '*the execution of his duty*.' However, ss 1 covers ss 2.

[140] This leaves open 2 issues: (a) what if a crime is not being committed but is only suspected; (b) what if a public citizen acts off their own bat. As indicated, specific provision should be made for this, but be limited to prevent misguided vigilante conduct. Further, a PO should not be treated as an *emergency worker* since the former has always been accorded considerable protection by the courts for obvious reasons.

longer required. Nor reference to '*bodily harm'* when '*physical injury'* is more readily understood by ordinary people.

- ***Modern Terms Needed***. Thus, terms such as '*battery'*, '*assault'* and '*bodily harm'* should all be replaced today by a more intelligible term - '*violent injury'* - which comprises (as it always did) the *infliction* by A of *unlawful physical injury* on B;
- ***2 Categories of Violent Injury***. There should be 2 categories: *viz*. (a) *very serious injury* (GBH, now VSI) which must be *life threatening*; (b) *serious injury* (ABH, now SI). Is '*common assault'* still required? If so, it should be categorized as (c) less serious injury (possibly using the name '*assault'*). However, more minor injury should (as before) have a civil remedy - not a criminal one;
- ***Other Redundant Legal Expressions***. Further, there are a host of other legal expressions which, on consolidation, should be consigned to the legal dustbin:
    - '*malice*' (hatred) was a biblical (moral) condemnation - not a legal term as such. It should be dispensed with. Not least, because it was inaccurately stated in *Cunningham* (1957);[141]
    - '*maliciously*' in the OPA 1861 does not mean that. It means '*intentionally*'. Thus, it should be dispensed with;
    - *'wilfully'* also means '*intentionally*', being a common word for the same in Victorian times. In *Sheppard* (1981), the House of Lords stretched this to cover '*recklessly*' in the context of child cruelty pursuant to the CYPA 1933, s 1 (see **13**).[142] However, this is both wrong and unhelpful since - under civil and commercial law and most other criminal law - the 2 legal concepts are distinct;
    - '*deliberately*' is a more modern synonym for '*intentionally*'. It adds nothing and should be dispensed with;
    - '*knowingly*' usually means '*intentionally*' (being a common translation of the latin '*sciens*' in the past) and, also, a synonym for '*deliberately*'. It is not the same as '*recklessly*'. Given this, there is legal confusion as to what it means. [143] Thus, this term should be dropped;
    - '*aforethought'* is spent. It is a (poor) translation of the hebrew '*premeditated*' in the Bible where it was used for examples of murder (since a premeditated (planned) act evidences intention). However, under English law, it came to mean '*intentionally*' (i.e. the *example* of intention (premeditation) came to refer to the *intention* itself). Since it now means '*intentionally*' this word should be dispensed with;
    - '*cold blood'*. This evocative phrase meant intentional killing - whereas '*hot blood'* (*chaud medley or chance medley*, in old english) meant killing in a brawl (fight) when passions ruled, which was not treated as intentional. However, English law no longer employs this categorization. Thus, '*cold blood'*, '*hot blood'* and '*chaud [hot] medley [brawl]*' should be dispensed with;
    - '*unlawfully*', '*without lawful excuse*' and '*without lawful justification'* mean the same thing.[144] The first is more succinct and wider than the second (which tended to be used to apply, more particularly, to excusable homicide);
    - '*common purpose'* is a synonym for '*common intention'* and '*common*', in this context, means '*joint*'. Thus, it is more useful to refer to a '*joint venture'* (i.e. where a killing involves more than one assailant). Further, '*joint purpose'* is a synonym for '*joint venture'*. Thus, the expression '*joint venture (JV)*' is better;
    - for the purpose of criminal liability, a person may be a '*principal*' or an '*accessory*' (agent). Other words - unnecessarily employed because they mean the same thing (and are more long winded) - are '*primary parties'*, '*secondary parties'*, '*principal in the first degree*' and '*principal in the second degree'*;
    - the Accessories and Abettors Act 1861 refers to '*aid, abet, counsel or procure'*.[145] Too often courts have misunderstood these words[146] because they have engaged in inappropriate retrospective legal linguisitic analysis, without knowing that

[141] Archbold (2024) 17B-46 'It means an actual intention to do the particular kind of harm that was in fact done, or recklessness as to whether such harm should occur (i.e. the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it)' quoting *Cunningham* (1957). This is incorrect. '*Malice*' was a term of moral condemnation, see ns 8-9. However, in the OPA 1861, '*maliciously*' (and in some earlier legislation) by a curious transposition of concept, it became a synonym for '*intentionally*'.

[142] In Victorian times, '*wilfully*' did not include *recklessness*. This shows why it is really important to update criminal law. Lord Keith's *dictum* in *Sheppard* (1981) is quixotic since '*deliberately*' is a synonym for '*intentionally*'. Thus, the CYPA 1933, actually, required A to intentionally: (a) assault; or (b) ill treat; or (c) neglect; or (d) abandon; or (e) expose, a child under 16. The effect of *Sheppard* (1981) was/is to set up a divergent caselaw, see Archbold (2024) 17B-49.

[143] Archbold (2024) 17B-50 to 17B-51. See *Panayi* (No 2) (1989) '*knowingly'* concerned (in a fraudulent evasion) means '*intentionally*'.

[144] See also Archbold 17B-45 ''*unlawfully'. This means without lawful justification or excuse'*.

[145] See Accessories and Abettors Act 1861, s 8. Also, Magistrates Courts Act 1980, s 44. See, also, Archbold (2024) 18-2 and 18-4.

[146] Archbold also (correctly) notes 'The courts have tended to construe these words so as to coincide with the common law in relation to felonies: thus aiders and abettors have been equated with principals in the second degree, and counsellors and procurers with accessories before the fact. This is unsatisfactory because it produces results which do not reflect the natural meaning of the words.'

these words were used in Victorian (and earlier) times in an ordinary everyday sense (not in a specific legal sense) and what has changed is their meaning because they are less used in ordinary every-day conversation today. In fact:

- '*aid*' was the common Anglo-Norman word for '*to help'*, as seen, for example in the Treason Act 1351 (still extant);
- '*abet*' (another Anglo-Norman word) is now covered by our word '*assist'*;
- '*counsel*' is, sometimes, said to mean '*advise*', which it does, but in a positive sense (to encourage, prompt, urge on). A synonym for this was to '*solicit*'.[147] Today, this older term is covered by the legal term'*incite*' and the older non-legal word '*solicit*' should be discarded in favour of the latter;
- '*procure*' has, also, a positive sense - to actively provide (arrange, bring about) the means for something.[148] For example, to procure poison/instruments to effect an abortion. However, it, also, was used in the sense of '*incite*' for example when a crime boss *orders* (incites, urges on) a subordinate (or a person orders a child under the age of capacity or an insane person) to kill. Thus, today, the word '*procures*' should be discarded for more modern terminology - *viz.* '*provides*' or '*incites*' - which word is appropriate, depending on the context.

Thus, '*aid*' is - in modern terms - covered by the word '*assist*' (help) and should be discarded. So too '*abet*'. And, '*solicit*' (counsel) should be replaced with the modern legal term '*incite*' - which should include synonyms such as '*encourage*', '*urge on*' and '*order*'. As for '*procure*', this should be stated in modern terms. All of such can be (easily) effected in legislation and the Accessories and Abettors Act 1861 consigned (justly) to the legal dustbin. Further, all these words reflect a general principle which is a pre-requisite for being a principal or accessory - the person must have *participated/helped* in the crime in some way (just as, if such participation ends, this may indicate '*withdrawl*' from the JV or the person '*dropping'* from being held, in law, to be a principal to, instead, being held to be an accessory).[149]

All the above should be dispensed with on consolidation. *So, what should remain?*

- The words required in place of the above are the 4 legal concepts of the commission of an act *viz* (a) intentionally; (b) recklessly; (c) negligently; (d) accidentally. These should all be matters of fact;
- Also, '*unlawful*' (a lawful act is rarely criminal);
- Also, a '*joint venture'* (JV);
- Also, the words '*assist'* (i.e. help) and '*incite*'. These are quite sufficient. They should be legal terms.

- ***Redundant Categorisation***.
  - Legal categorization from the time of Bracton (c. 1250) categorized defences into those which were *justifiable* (i.e. made the killing lawful, such as lawful judicial execution) and those which were *excusable* (i.e. those which mitigated (whether wholly or completely) the crime. This categorization is (generally) no longer employed. It should be dispensed with;
  - So too, *constructive* (*implied*) constructions of law. These were legal presumptions, first seen in Biblical times, in which an intention to kill was *presumed* by law in certain instances. However, despite the Homicide Act 1957 being poorly worded, all these constructions of law were (correctly) abolished by the Act (save for the inaptly termed '*transferred malice'*). Thus, reference to constructive/implied (they are synonyms) and all (common law) legal presumptions of law should be dispensed with (the concept of transferred malice would be laid down in statute);
  - So too, the more recent categorization of manslaughter into *voluntary* (i.e. intention) and *involuntary*. It does not mean anything;[150]

[147] Archbold (2024) 18-21 'The ordinary meaning of the word '*counsel*' is '*advise*' or '*solicit*'. The latter is correct; the former is not since '*counsel/solicit'* is more proactive (positive) than just giving advice.

[148] In *Blakley v DPP* (1991) the judge was incorrect. The word '*procure'* covers a party supplying (providing) equipment to be used in a robbery. The *dictum* in *A-G's Reference (No 1 of 1975)* (1975) is too woolly, a better description is to '*provide'* which is helping to bring about something (a crime) by personal input. Thus, it would include lacing drinks (whether hidden lacing or not) if with intent to bring about a road traffic crime (and, scepticism should be present if a party alleges that the lacing was to *prevent* a road traffic crime).

[149] Archbold (2024) 18-16 refers to 2 cases - *Salmon* (1880) and *Swindall* (1846) - but fails to note *why* the parties were (justly) convicted of manslaughter. Each met the pre-requisites for the same - being *reckless* (wanton disregard for the life of another) and their act being a '*substantial cause'* of the death.

[150] These terms go back to Kenny (in 1902) see McBain, n 3, p 111, with Kenny using the word '*voluntary*' as a synonym for '*intention*'. However, the latter term is more appropriate today. And, this categorization is unnecessary (outdated) if explicit terms such as '*intention*' and '*recklessness*' are used in modern drafting.

- The categorization of acts by Bracton (c. 1250) - following theology - into lawful (*licit*) and unlawful (*illicit*) acts with the result that it was murder if a person, in the commission of an illicit act (e.g. affray, theft) killed another - even if done accidentally or negligently - no longer applies. It should be consigned to the legal bin, being a constructive presumption of law. Such includes where a person *intends only to commit GBH but the victim dies*. *The only exception* should be where: (a) A commits (not just intends to commit) GBH; and (b) is reckless whether the victim (B) dies or not, and B dies. This should be murder since it has a sound legal and policy basis (1603 Act and dueling). It was also founded on GBH being a battery that was *life threatening*.

- ***Coke's definition of Murder***.
  - Reference to Coke's formulation of murder (often, modernized without clear legal attribution), today, is, unhelpful. It is more than 350 years old. Legal texts, often, fail to indicate his original formulation. They, also, fail to note other statements Coke made on homicide. Further, a legislative definition can be expressed in simple modern terms.

In conclusion, the reason why criminal law is in such a '*mess*' (as Law Commission accepted in 1994) is that the courts (including senior courts) and draftsmen (as well as those advising them) have forgotten so much of the legal history on which homicide and battery was founded. Also, because counsel, so often, has failed to present the legal history (and very relevant older cases/legal analysis) as in the important case of *Vickers* (1957). As it is, today, a person, legally, can be killed - or violently injured - one of 4 ways: (a) intentionally; (b) recklessly; (c) negligently; or (d) accidentally. As to (c) and (d), these are not crimes. As to (a) this is murder and (b) is manslaughter. The only issue is whether - as a matter of public policy - killing pursuant to *GBH* where the killer is reckless whether the victim dies or not - should be elevated to murder.

In conclusion, homicide and criminal injury (or unlawful injury) should replace the bewildering mess that presently exists.

11. Child Destruction (Unlawful Abortion)

Presently, the Infant Life (Preservation) Act 1929, s 1 (*punishment for child destruction*) states:

> (1) Subject as hereinafter in this [ss] provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful [intentional] act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction…provided that no person shall be found guilty of an offence under this [s] unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.
>
> (2) For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of [28] weeks or more shall be *prim â facie* proof that she was at that time pregnant of a child capable of being born alive.

Today, the words '*unlawful abortion'* are more commonly used instead of '*child destruction'*. Also, the word '*abortion*' is - generally - more intelligible that the words '*children destruction'* when the child is unborn. Further, it should, also, be noted why this Act was implemented to cover what was otherwise (effectively)[151] '*murder*', since the killing was intentional. It was felt in the 1920's (almost than 100 years ago) that the term '*murder'* was too harsh (being psychologically harmful) in the circumstances where the mother was, often, the protagonist. As well as the above, there is a related crime presently existing in the OPA 1861, s 58 (*administering drugs or using instruments to procure abortion***)** when the mother is involved. It states:

> Every woman, being with child, who, with intent to procure her own miscarriage [i.e. an abortion], shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony…

As it is, today, '*abortion'* is a more common expression than '*miscarriage*' and it would seem better to refer to '*unlawful abortion'* than to '*child destruction'*. Further, these 2 distinct crimes should be merged since they are very closely related.[152] Also, applicable is the Abortion Act 1967, s 1 (*medical termination of pregnancy*) which states:

> (1) Subject to the provisions of this [s], a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if [2] registered medical practitioners are of the opinion, formed in good faith (a) that the pregnancy has not exceeded its [24th] week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or (c)

[151] '*Effectively'* because, in Coke's day, murder did not cover an unborn child because it was not held to be in being (*in esse*), see **2(c)**.

[152] Archbold (2024) 19-188 notes an '*overlap*' between the 1929 and 1861 Acts.

> that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Also, s 5(1) (*supplementary provisions*) which states:

> (1) No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act. (2) For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by [s] 1 of this Act and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that [s] if (a) the ground for termination of the pregnancy specified in [ss](1)(*d*) of that [s] applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus, or (b) any of the other grounds for termination of the pregnancy specified in that [s] applies**.**

These can be imported into the above wording, by including a definition of a '*lawful medical termination of pregnancy'*. Other sections of the 1967 Act should be in an *Appendix.* Finally, the OPA 1861, s 59 (*procuring drugs etc to cause abortion*) states:

> Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor…*etc*

All these sections in the 1861, 1929 and 1967 Acts can be merged and much improved, especially if set out, more intelligibly, *viz.*

1. <u>Unlawful Abortion</u>

(1) It is a crime if a person (A):

(a) unlawfully [153]

(b) intending [154] to kill an unborn child (B)

(c) does an act causing B's death

(d) before B has an independent existence from its mother.[155]

(2) It is a defence if A:

(a) in good faith

(b) does an act causing B's death

(c) for the purpose of the lawful medical termination of pregnancy

` (d) at a regulated clinic, health care facility or hospital.

(3) Appendix [ ] applies.

2. <u>Assisting Unlawful Abortion</u>

(1). It is a crime if a person (A):

(a) unlawfully *and*

(b) intentionally [156]

(c) supplies (or provides)[157]

(d) any noxious thing, instrument or other means referred to in s 3(2)(b)-(d) (*see below*)

(e) knowing it is intended to procure an unlawful abortion

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[153] The older term is '*without lawful excuse'*.

[154] The 1929 Act says '*with intent to destroy the life of a child'* but, then, later states '*by any wilful [intentional] act causes a child to die'*. Since most other criminal legislation refers to '*intentionally*' (older words are '*wilfully*' or '*maliciously*') it is best to use the word '*intentionally*', to harmonise things.

[155] This should be defined today. A child: (a) still in its mother's womb; or (b) which breathes without independent circulation from it's mother, does not have an independent existence. However, the fact it is still attached by an umbilical cord is not relevant. This dispenses with very antiquated (Victorian) caselaw on what unborn means, see Archbold (2024) 19-15. Further, there is a clear overlap between the words '*capable of being born alive*' and having '*an independent existence from its mother'*. The former can be dispensed with if the latter is sufficiently defined. See also *Rance v Mid-Downs Health Authority* [1991] 1 QB 587.

[156] This is not, presently, in the legislation but should be, to clarify matters.

[157] '*Provides*' is a more intelligible word to '*procures*' and such can be direct or indirect.

(f) whether (or not) the mother is with child.

3. Interpretation

(1) '*unborn child'* means a child (including a foetus when more than one)[158] capable of being born alive and:

(a) evidence that a woman

(b) at any material time

(c) had been pregnant for 28 weeks (or more)

(d) is *prim â facie* proof she was

(e) at that time

(f) pregnant of a child capable of being born alive.

(2) '*act*' includes where A (being the mother) or another person (C):

(a) intending to procure an abortion[159]

(b) takes any noxious thing[160] (or C administers it to her) or

(c) uses any instrument (or C does so on her) or

(d) employs any other means

(e) to achieve (a).

(3) '*an independent existence from its mother.'* An unborn child does not have such if:

(a) it is still in its mother's womb or

(b) it cannot live without connection to its mother (excluding an umbilical cord).

(4) '*noxious thing*' includes any poison or abortifacient.

In conclusion, the 1861 Act (ss 58-9), the 1929 Act and the 1967 Act dealing with unlawful abortion (and assisting) should be modernized and combined into 2 sections. So too, the crime of interfering with abortion services (see Public Order Act 2023, s 9). At present, they are all out of kilter.

12. Infanticide

The Infanticide Act 1938, s 1 makes it a crime of *infanticide* where a woman kills her child (when the latter is under the age of 12 months) and such would otherwise be: (a) *murder*; or (b) *manslaughter* [161] but for her temporary imbalance of mind (arising from not having fully recovered from the effect of giving birth or due to lactation). Thus, it states:

> (1) Where a woman by any wilful [i.e. intentional] act or omission causes the death of her child being a child under the age of [12] months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
>
> (2) Where upon the trial of a woman for the murder or manslaughter of her child, being a child under the age of [12] months, the jury are of opinion that she by any wilful [i.e. intentional] act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter, return in lieu thereof a verdict of infanticide.
>
> (3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane…

However, it should be questioned whether this crime is still required since - in 1938 - the word '*infanticide*' was thought to be less condemnatory than the words '*murder*' or '*manslaughter*'. Today, while this purposive element would (likely) still apply to the word '*murder*', it is likely that the expression '*infanticide*', today, would be treated

[158] See Archbold (2024) 19-15.

[159] '*Abortion*' is the more modern word to a '*miscarriage*.'

[160] '*Noxious*' thing should include '*poison*' but also the word '*abortifacient*' which word is more commonly used.

[161] See *Gore* [2007] EWCA Crim 2789.

as a more pejorative expression than a reference to '*manslaughter*'. Further, today, there is also the concept of '*diminished responsibility'* ('*DR*') which reduces murder to manslaughter. In short, there would seem a good case for holding that the crime of infanticide be abolished and that such, also, be held manslaughter (by reason of DR). Thus:

It is a crime if a person (A):

(a) intentionally

(b) causes the death of her child (B)

(c) if B was under 12 months at the time

and

(d) a *substantial* [162] cause of B's death was that

(e) the balance of A's mind was disturbed by reason of

(f) not having fully recovered from (or the effect of lactation after) B's birth.[163]

In such a case, a judge should be able to hold that the death of the child was due to the DR (or insanity)[164] of the mother - after reviewing the medical evidence as a *preliminary matter* - prior to any trial to decide on whether murder/manslaughter otherwise occurred. In this way, no jury would be involved (since they would not really understand the medical evidence as such). Further, there would be no need for a full trial (this not being in the public interest) if - as a *preliminary matter* - a judge held (on the medical evidence) there was *manslaughter by reason of DR*. This would spare suffering (as well as the expense of a trial) and, yet, still deliver a just outcome that is - like the reduction of murder to manslaughter - in effect - a (special) verdict of manslaughter.

In conclusion, the crime of 'infanticide' of a child under 12 months is not needed today in light of the law on DR. This issue (in modern times) should be dealt with differently (and, perhaps, more humanely). It should be held to be manslaughter, on the basis that the mother was suffering from DR at the time. Further, whether DR applies should be decided by a judge as a preliminary matter - on the basis of medical evidence - without the need for a trial.

13. <u>Other Crimes against Children (under 18)</u>

There are other crimes against besides unlawful abortion and infanticide. These are contained, at present, in the 1861 Ac ('**1861 Act'**), the Children & Young Persons Act 1933 ('**1933 Act'**) and that of 1963 ('**1963 Act'**). For the text of all the below, see *Appendix 2.*

- **<u>Concealing child's birth</u>.** The OPA 1861, s 60 (*concealing the birth of a child)* states it is a crime: 'if any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof…';
- ***<u>Exposing child under 2</u>***. *The OPA 1861, s 27 (exposing children whereby life is endangered) states it is a crime: 'whosoever shall unlawfully abandon or expose any child, being under the age of [2] years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured….*[165] [This is also covered by the 1933 Act below and is unnecessary];
- ***<u>Cruelty to child under 16</u>***. *The 1933 Act, s 1 (cruelty to children under 16) states it is a crime if any person: 'who has attained the age of [16] years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature)... '*[166] [This should be combined with the non-accidental death of a child or VP];
- **<u>Causing child under 16 to beg</u>.** The 1933 Act, s 4 (*causing or allowing persons under 16 to be used for begging*) states it is a crime if any person 'causes or procures any child or young person under the age of [16] years or, having responsibility for such a child or young person, allows him to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise)…';

[162] In the case of murder and manslaughter, A is only liable if his act is '*a substantial cause'* of B's death. This should apply here.

[163] Obviously, if not manslaughter under this head, it would be murder unless any other reduction applied (i.e. LSC (loss of self control)).

[164] This is still possible in this case, see ss 1(3) of the Infanticide Act 1938 '*Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane*.'

[165] See also Archbold (2024) 19-370.

[166] Ibid, 19-375.

- ***Giving liquor to child under [5]***. *The 1933 Act, s 5 (giving intoxicating liquor to child under 5) states it is a crime if any person 'gives, or causes to be given, to any child under the age of [5] years any alcohol … except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended sickness, or other urgent cause…*[167] [This should be inserted into the Licensing Act 2003];
- ***Sale of tobacco to person under 18***. *The 1933 Act, s 7 (sale of tobacco etc to persons under 18) states it is a crime if any person 'sells to a person under the age of [18] years any tobacco or cigarette papers, whether for his own use or not…';* [This should be inserted in legislation relating to smoking/tobacco]
- **Sale of aerosol paint to child**. The Anti-Social Behaviour Act 2003, s 54 *(sale of aerosol paint*), states it is a crime if a person 'sells an aerosol paint container to a person under the age of [16]. (2) In [ss] (1) "*aerosol paint container*" means a device which (a) contains paint stored under pressure, and (b) is designed to permit the release of the paint as a spray.';
- ***Exposing child under [7] to risk of burning***. *The 1933 Act, s 11 (exposing children under 7 to the risk of burning) states it is a crime if any person who has attained the age of 16 'having responsibility for any child under the age of [7] years, allows the child to be in any room containing an open fire grate or any heating appliance liable to cause injury to a person by contact therewith not sufficiently protected to guard against the risk of his being burnt or scalded without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury…';* [This should be covered by manslaughter/GBH, a separate crime is not required];
- **Safety of children at entertainments.** The 1933 Act, s 12 (*failing to provide for the safety of children at entertainments*) states: '(1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds [100], it shall be the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children. (2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this [s]. (3) If any person on whom any obligation is imposed by this [s] fails to fulfil that obligation…'
- ***Maximum employment hours, child under 14 or 15***. *The 1933 Act, s 18, stipulates the maximum work hours for such children (including street trading, see s 20). It is a crime to require employment beyond the same.* [This should be in employment legislation]
- ***Children performing - endangering life or limb/ performing abroad***. *The 1933 Act, ss 23-6 contain restrictions on children performing, see s 23 (prohibition against persons under 16 taking part in performance endangering life or limb), s 24 (restriction on training child under 12 for performance of a dangerous nature), ss 25-6 (children performing abroad for profit). Provisions on performances are, also, contained in the 1963 Act, ss 37, 39-42, 44.* [This should be in employment legislation]
- **Female genital mutilation (FGM).** The FGM Act 2003 deals with this. In particular, the Act makes a crime of FGM (s 1), assisting a girl to mutilate her own genitalia (s 2), assisting a non-UK person to mutilate overseas a girl's genitalia (s 3) and failing to protect a girl from risk of genital mutilation. There are, also, FGM protection orders. This Act should be placed in a *Crimes against the Person Act*, with FGM order sections being placed in an *Appendix.* The wording of the crimes should, also, be modernized. For example, s 1 can be modernized to state:

  1. Female Genital Mutilation (FGM)

  (1). It is a crime if a person (A):

  (a) excises, infibulates or otherwise mutilates

  (b) the whole (or part) of

  (c) a girl's genitalia.

  Further, the acronym '*FGM*' should be used, to prevent it being repeated many times in long form in the text (also, it is, anomalously sometimes referred to as '*genital mutilation'* in the FGM Act 2003 when the correct reference is to FGM). There should, also, be a defined term '*genitalia'* (i.e. labia majora, labia minora or clitoris), instead of long form repetition.
- **Child abduction**. The Child Abduction Act 1984, s 1 makes a crime the abduction of a child by a parent and s 2 a crime to abduct a child by another person.[168] See *Appendix 2* for text. There is also the Child Abduction and Custody Act 1985 (ss 1-27) which enacts into English Law the Hague Convention 1980 on the abduction of children.
- **Surrogacy**. The Surrogacy Arrangements Act 1985 contains 4 ss, with s 4 dealing with crimes.

[167] Surely, this age limit should be increased (i.e. before 14/15). Also, the exception would no longer seem relevant.

[168] Ibid, 19-392.

In conclusion, all the above (as modernized) should be placed in a Crimes against the Person Act, under the title Crimes against Children. Administrative detail should be placed in an Appendix to this new legislation. However, consideration should be given to raising the relevant age of the child to 16 in some of the cases above.

14. <u>False Imprisonment</u>

The is a common law crime which Archbold (2024) describes as follows:

> 'False imprisonment consists of the unlawful and intentional or reckless restraint of a person's freedom of movement from a particular place. It is unlawful detention which stops the person from moving away as they would wish to move.' [169]

An article by the author has considered the legal history of this crime[170] which should now be placed in legislation. This would not be difficult. '*False*' means unlawful. Thus, it may be better to refer to '*unlawful imprisonment*' in a modern version.

1. <u>Unlawful Imprisonment</u>

(1) It is a crime if a person (A):

(a) unlawfully

(b) intentionally (or recklessly)

(c) prevents the free movement of a person (B)

(d) from a particular place.

15. <u>Kidnap</u>

This is a quite separate common law crime to false imprisonment.[171] Child abduction is part of the same. This crime, which has been considered by the Law Commission relatively recently, should be placed in legislation. In *D* (1984) the House of Lords considered that the crime comprised 4 ingredients (pre-requisites) *viz.*

- the taking (or carrying away) of one person by another
- by force (or the threat of force)
- without the consent of the person taken (or so carried away)
- without lawful excuse (i.e. unlawfully)

This should be modernized as follows:

1. <u>Kidnap</u>

(1) It is a crime if a person (A):

(a) unlawfully

(b) takes [away][172] (or carries off) another person (B)

(c) using force (or the threat of the same)

(d) without B's consent.

16. <u>Torture</u>

The Criminal Justice Act 1988, ss 134-5 deals with this (see *Appendix 1*). The crime is set out in s 134. It states:

> **<u>Torture</u>.** (1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the [UK] or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

Section 135 requires the consent of the Attorney-General prior to prosecution. As to this crime it should be modernized, by being set out in a more modern and user-friendly form *viz.*

1. <u>Torture</u>

(1). It is a crime if a person (A) who is a public official:

(a) when performing his official duty

(b) intentionally

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[169] Ibid, 19-417.

[170] GS McBain, *False Imprisonment and Refusing to Assist a Police Officer* (2015) Journal of Politics and Law, vol 8, no 3.

[171] See Archbold (2024) 19-418. It has been juxtaposed by Archbold with false imprisonment. However, they are separate.

[172] The addition of the word '*away'* would seem useful.

(c) inflicts in (or outside) the UK

(d) severe [physical] pain (or [mental] suffering) [173]

(e) on another person (B)

(2) '*Public official'* includes when A acts in an official capacity, whatever A's nationality.

(3) '*Performing*' includes purportedly performing.

17. Slavery & Human Trafficking Crimes

The Modern Slavery Act 2015 specifies various crimes in respect of the above, see ss 1-4 (see *Appendix 2*). The Act goes on to make provision on the following:

• Protection Orders	(ss 8-10).	Put in an *Appendix*
• Asset Seizure	(ss 11-2, 35-9).	Put in a Criminal Procedure Act (CPA)
• Independent Anti-Slavery C-er	(ss 40-4).	Put in a Criminal Justice Act (CJA)
• Gangmasters	(ss 11A, 54-5).	Ibid
• Protection of Victims	(ss 14-34)	Ibid.

In conclusion, the crimes relating to the above should be placed in a Crimes against the Person Act.

18. Other OPA Crimes

The OPA 1861 contains other crimes against person. They wording in the case of all of them should be modernized. In the case of others, the crimes are, actually, *public order crimes* and they should also be placed in the specific legislation to which they relate to. Thus (*I italicize sections which should be repealed*):

- **Endangering Railway Passengers**. The OPA, ss 32-4 specifies what are crimes against the public (being railway passengers) by means of criminal damage. Thes sections are best placed in a Railways Act, with ss 32-3 being combined, as modernized; [174]
- ***Furious Driving of Carriages****. The first carriage in England is thought to have been that of Queen Elizabeth 1 (1588-1603) in 1564 (the 'hackney coach', it had 4 wheels and seated 6).[175] Being used by royalty and the wealthy solely the hackney coach did not become a form of public transport until the 1620's. From the hackney coach developed the (hackney) stage coach. It was used for the carriage of people outside London to the rest of England (and, later, Scotland). The hackney cab was first introduced into London in 1823 and the hackney coach there was superceded by the smaller (2 wheeled) hackney cab by 1850. The stage coach was superceded by the railways in 1869 (the mail coach superceded post horses in 1784 and was then superceded by the railways in 1830). The hackney cab was superceded by the motor cab (the famous black cab, the taxi) which was first licensed in 1903. The hackney omnibus (bus, omni meaning 'for all') was introduced in London in 1829. It was superceded by the motor(ized) bus in 1911. By the First World War (1914-8) horse drawn forms of public transport in London became redundant and the motorized cab (motor cab, also called a cab or taxi) and the (motor) bus took over. The OPA 1861, s 35 makes it a crime for drivers of 'carriages' injuring persons by furious driving.[176] This could be modernized and contained in a Road Traffic Act. [177] That said, the Law Commission (in 1992) proposed that this s 35 be repealed.[178] One would agree;*
- ***Obstructing or Assaulting a Clergyman****. The OPA 1861, s 36 provides for this. [179] This section should be modernized, if still required. It was intended to cover Church of England clergy [180] and is a mixture of matter, in so far as this section:*

[173] The words in brackets should be inserted for clarification.

[174] I have discussed these, and the Railway Regulation Act 1840 (s 16, *wilful obstruction*), Malicious Damage Act 1861 (ss 35-6, 58, *railways*), and Railways Regulation Act 1868 (s 23, *trespassing*), in the second article, see GS McBain, *The Creation of an English Criminal Code: 6 Acts. Second Act - Property and Finance Crimes Act* (2025) International Law Research ('**ILR**'), vol 14, no 1, pp 70-105.

[175] See GS McBain, *Time to Abolish the Common Carrier* [2005] Journal of Business Law, Sept, pp 545-96. The word '*hackney*' is thought to have come from the Femish '*haquence*' (horse for hire) or the old French '*haquenc*e' (an '*ambling nag'*). The word '*coach*' is thought to have derived from *'kotze'*, its birthplace in Hungary. The word '*cab*' came from the French '*cabriolet'*.

[176] OPA 1861, s 35 (*drivers of carriages injuring persons by furious driving).* **'**Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful [intentional] misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years.'

[177] This section has been applied to cyclists. This is rather an unwarranted extension since a carriage was a horsedrawn vehicle for more than one person. It is better this legislation is modernized, if retained.

[178] See McBain, n 1, p 139.

[179] s 36 (*obstructing or assaulting a clergyman or other minister in the discharge of his duties).*'Whosoever shall, by threats or force, obstruct or prevent or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any

- *refers to 'assault' (i.e. gbh, abh, common assault, assault (i.e. a threatened battery) the position of a minister of religion need be no different to the general law today;*
- *deals with the duty of the same vis-a-vis the burial of the dead, this should be covered by burial legislation (not least, so that it can cover catholic and non-conformist churches);*
- *deals with the mass ('divine service') it should be in church legislation;*
- *deals with arrest for civil process, this is now very limited [181] although provision for a minister can be made in the appropriate legislation, if still required.*

Finally, in any case, the sentence for this crime (2 years) is too harsh, a fine would be appropriate.[182] That said, the Law Commission, in 1980 (and 1992) proposed that this section be repealed. [183] One would agree;

- ***Wreck**. In Victorian England (and earlier) there were problems involving the wrecking of ships off the English coast. Lighthouses were few and (wooden) ships were often deceived by 'false lights' so that they hit rocks and then were plundered by malefactors who specialized in seizing any cargo - as well as jetsom, flotsam and lagan. All this is history. Today, ships and yachts have navigation systems, there are lifeboat (and helicopter) services on stand-by and few vessels are wrecked. When they are (oil tankers etc), insurance experts are involved from the start - as are the police to cordon off areas where wreck might come ashore. Justices of the peace ('magistrates') are not involved. Thus, the OPA 1861, s 37 [184] which deals with assaults on 'any magistrate, [police or customs] officer, or other person' [185] is no longer required (as noted by the Law Commission in 1980 and 1992). [186] The ordinary law of assault and battery can apply*. Another section of the OPA, s 17, deals with impeding escape from wreck (which is the crime of false imprisonment and assault/battery anyway).[187] This section should be modernized and placed in shipping legislation, if needed (it is asserted it is not). It may noted that cases in respect of both these crimes are now very rare;[188]
- ***Apprentices**. The OPA 1861, s 26 (not providing apprentices or servants with food, &c. whereby life is endangered) deals with assaults on 'apprentices', stating:*

  > *whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor etc [liable to imprisonment for a term not exceeding 5 years] [189]*

  This section is obsolete. For centuries in the City of London (and elsewhere) there operated guilds (specialist trades) in which those skilled in the trades taught their apprentices - who were young men (aged 14-21 usually) - apprenticed to them for a fixed period (usually 5-10 years) pursuant to formal contracts (indentures) which specified the obligations between the master and apprentice.

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churchyard or other burial place, or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this [s] aforesaid, or who to the knowledge of the offender shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanor (obs), and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years.'

[180] The catholic church was re-established in England in 1850.

[181] Archbold (2024) 19-426 notes 'Arrest under civil process is now abolished, except (a) for contempt of court of a civil nature; and (b) in the circumstances and subject to the restrictions set out in the Debtors Act 1869, ss 4-6 and the Administration of Justice Act 1970, s 11.'

[182] Ibid, 19-310. It refers to the 1992 ed of Archbold (some 23 years ago) since it was not worthy of inclusion in later eds.

[183] See McBain, n 1, pp 130-1.

[184] s 37 (*assaulting a magistrate, &c. on account of his preserving wreck*). 'Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding [7] years.'

[185] In olden days, customs officers would be available to see that duty was paid on wrecked goods that reached shore.

[186] See McBain, n 1, pp 131-2.

[187] s 17 (*impeding a person endeavouring to save himself from shipwreck*). 'Whosoever shall unlawfully and maliciously [intentionally] prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this [s] first aforesaid, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life [imprisonment for life].' Given the reference to '*intention*' this could be murder if the same was a substantial cause of the killing (drowning) of B (this was the manifest intention in many cases of wreck to ensure that there was no living person on board).

[188] See also Archbold (2024), 19-312 &19-314. It refers to the 1992 ed of Archbold (published some 23 years ago) since it was not worthy of inclusion in later eds.

[189] Ibid, 19-322. It refers to the 1992 ed of Archbold (published some 23 years ago), since it was not worthy of inclusion in later eds.

There was also a court which dealt with disputes - the Court of the Chamberlain of the City of London (City of London apprentices' court). This court determined disputes between masters and apprentices in the City of London (now the Square Mile) with the chamberlain sitting as a judge and the comptroller (controller) of the City as his deputy. This court administered the criminal punishment of apprentices and masters, concurrent with that of a magistrate's court. This court does not appear to have sat for, at least, 100 years and, in 1894, a Royal Commission recommended its abolition (further, today, such a court would not meet the requirements of the European Human Rights Convention, art 6 since the chamberlain does not have to be a lawyer). This court should be formerly abolished and - in any case - apprenticeships by indenture have long ended. It is appropriate that modern employment law govern matters. It should be noted that the indenture system of apprenticeships from medieval times involving contacts between individuals is very different from modern government funded 'apprenticeship' programmes developed from the 1960's (National Apprenticeships Service etc). In these, persons over 16 (men and women) undertake apprenticeships pursuant to a contract of employment usually with a government agency or the same being involved. There are minimum levels of pay etc;

- **Ill Treatment of Mental Patients**. The Mental Capacity Act 2005, s 44 (*ill treatment or neglect*) deals with the ill treatment - or neglect - of mental patients. The Criminal Justice and Courts Act 2015, ss 20-5 (*ill treatment or wilful neglect: care worker offence*), deals will ill treatment or neglect resulting from the conduct of care workers.[190] These are best left in dedicated legislation.

In conclusion, crimes relating to railways should be modernized and placed in a Railways Act. Crimes in the OPA 1861, ss 26 (apprentices), 35 (coaches), 36 (ministers of religion) and 37 (wreck) (also, probably, s 17 (wreck)) are obsolete and should be abolished. Crimes dealing with the ill treatment (or neglect) of mental patients should be left in the Acts dealing with the same.

19. Harrassment

This crime, at present, is very muddled. It is to found in various pieces of legislation: *viz.*

Act		No of Sections (total 36)
Administration of Justice Act 1970	(AJA)	(s 40, harassment of debtors)
Public Order Act 1986	(POA)	(s 4A, intentional harassment)
		(s 4B, harassment on account of sex)
		(s 5, harassment, alarm or distress)
Crime and Disorder Act 1998	(CDA)	(s 31, racially or religiously aggravated harassment)
Malicious Communications Act 1988	(MCA)	(s 1, offence of sending letters *etc*)
Protection from Harassment Act 1997	(PHA)	(ss 1-13)
Criminal Justice and Police Act 2001	(CJPA)	(s 42 & 42A, harassment in home)
Stalking Protection Act 2019	(SPA)	(ss 1-14, stalking protection orders)
Protection from Sex Based Harassment in Public Act 2023		(intentional harassment, alarm or distress on account of sex).[191]

As to the content of these pieces of legislation, they are as follows:

- **Punishment for unlawful harassment of debtors.** AJA 1970, s 40 states: (1) 'A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract, he (a) harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are calculated to subject him or members of his family or household to alarm, distress or humiliation; (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it; (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or (d) utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not…'
- **Intentional harassment, alarm or distress.** POA 1986, s 4A states: (1) 'A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.'
- **Intentional harassment, alarm or distress on account of sex.** POA 1986, s 4B states: '(1) A person (A) is guilty of an offence under this [s] if (a) A commits an offence under [s] 4A (*intentional harassment, alarm or distress*), and (b) A carried out the conduct referred to in [s] 4A(1) because of the relevant person's sex (or presumed sex). (2) In [ss] (1) "*presumed"* means presumed by A; "*the relevant person*" means the person to whom A intended to cause harassment, alarm or distress. (3) For the purposes of [ss] (1)(b) it

[190] See also Archbold (2024) 19-363a (*mental patients*) and 19-363g *(care worker offences*).

[191] This Act adds in s 4B to the POA 1986.

does not matter whether or not (a) A also carried out the conduct referred to in [s] 4A (1) because of any other factor not mentioned in [ss] (1)(b), or (b) A carried out the conduct referred to in [s] 4A(1) for the purposes of sexual gratification.

- **Harassment, alarm or distress.** POA 1986, s 5 states: (1) 'A person is guilty of an offence if he (a) uses threatening or abusive words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.'
- **Racially or Religiously Aggravated Offences**. CDA 1998, s 31 (*racially or religiously aggravated public order offences*) states '(1) A person is guilty of an offence under this [s] if he commits (b) an offence under s] 4A of that Act (*intentional harassment, alarm or distress*); or (c) an offence under [s] 5 of that Act (*harassment, alarm or distress*), which is racially or religiously aggravated for the purposes of this [s].
- **Offence of sending letters etc. with intent to cause distress or anxiety.** MCA 1998, s 1 (1) states 'Any person who sends to another person (a) a letter, electronic communication or article of any description which conveys (i) a message which is indecent or grossly offensive; (b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature, is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within [para] (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.'
- **Prohibition of harassment.** PHA 1997, s 1 states: '(1) A person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. (1A) A person must not pursue a course of conduct (a) which involves harassment of [2] or more persons, and (b) which he knows or ought to know involves harassment of those persons, and (c) by which he intends to persuade any person (whether or not one of those mentioned above) (i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do. (2) For the purposes of this [s] or [s] 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other. (3) [ss] (1) or (1A) does not apply to a course of conduct if the person who pursued it shows (a) that it was pursued for the purpose of preventing or detecting crime, (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c) that in the particular circumstances the pursuit of the course of conduct was reasonable. S 2. *(offence of harassment)* states: (1) A person who pursues a course of conduct in breach of **[s]** 1(1) or (1A)**]** is guilty of an offence…
- **Offence of stalking.** PHA 1997, 2(A) states: (1) A person is guilty of an offence if (a) the person pursues a course of conduct in breach of [s] 1(1), and (b) the course of conduct amounts to stalking. (2) For the purposes of [ss] (1)(b) (and [s] 4A(1)(a)) a person's course of conduct amounts to stalking of another person if (a) it amounts to harassment of that person, (b) the acts or omissions involved are ones associated with stalking, and (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person. (3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking (a) following a person, (b) contacting, or attempting to contact, a person by any means, (c) publishing any statement or other material (i) relating or purporting to relate to a person, or (ii) purporting to originate from a person, (d) monitoring the use by a person of the internet, email or any other form of electronic communication, (e) loitering in any place (whether public or private), (f) interfering with any property in the possession of a person, (g) watching or spying on a person.' See also legislation on the Breach of Stalking Protection Order [SPO]. The SPA 2019, s 8 states: '(1) A person who, without reasonable excuse, breaches a [SPO] or an interim [SPO] commits an offence.'
- **Harassment in Home. Police directions stopping the harassment *etc* of a person in his home.** CJPA 2001, s 42 states: **'**(1) Subject to the following provisions of this [s], a [PO] who is at the scene may give a direction under this [s] to any person if (a) that person is present outside or in the vicinity of any premises that are used by any individual ("*the resident*") as his dwelling; (b) that [PO] believes, on reasonable grounds, that that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual (i) that he should not do something that he is entitled or required to do; or (ii) that he should do something that he is not under any obligation to do; and (c) that [PO] also believes, on reasonable grounds, that the presence of that person (either alone or together with that of any other persons who are also present) (i) amounts to, or is likely to result in, the harassment of the resident; or (ii) is likely to cause alarm or distress to the resident.'
- **Harassment in Home. Offence of harassment *etc*. of a person in his home.** The CJPA 2001**,** s 42A states '(1) A person commits an offence if (a) that person is present outside or in the vicinity of any premises that are used by any individual ("*the resident")* as his dwelling; (b) that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual (i) that he should not do something that he is entitled or required to do; or (ii) that he should do something that he is not under any obligation to do; (c) that person (i) intends his presence to amount to the harassment of, or to cause alarm or distress to, the resident; or (ii) knows or ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and (d) the presence of that person (i) amounts to the harassment of, or causes alarm or distress to, any person falling within [ss] (2); or (ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person..'

All the above can only (charitably) be described as '*muddled*'. The root of the problem is the concept of '*harassment'*. Under early English law, the word *'harassment'* derives from '*unlawfully threatening'* someone (in Anglo-Norman, menacing from '*menaces*') which is a form of '*intimidation*' (coercion). This may be seen in the crime of blackmail which, a prior article has noted, has the following pre-requisites:

Blackmail. (1) It is a crime if a person (A):

(a) makes an unwarranted demand;

(b) with menaces[192] [threats];

(c) intending to

(d) make a gain for himself (or another); or

(e) to cause loss to another (B).

Bearing the above in mind, it is possible to formulate (and simplify) harassment into 2 crimes *viz.* (a) unlawful harassment, and (b) stalking (this is a discrete crime of harassment since it has its own *modus operandi*). Also, legislation on stalking in the 1997 and 2023 Acts should be combined. Finally, the formulation for stalking should be simplified, to be more intelligible *viz.*

Stalking

(1) It is a crime if a person (A):

(a) unlawfully

(b) engages in conduct

(c) which A knows (or ought to know)

(d) intimidates another person (B)

(2) '*Conduct' (see examples in the PHA 1997).*

As to the consolidation of the crime which covers those, presently, provisions scattered across legislation at present, there should be a crime of '*Harassment*' *viz.*

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally

(c) harasses another person (B)

(2) '*Harass*' includes the following conduct by A, to:

(a) threaten physical (or mental) harm to B (or his family);

(b) threaten to cause criminal damage to B's (or his family's) property (real or personal);

(c) send non-consensual communications to B (or his family) which contain:[193]

(i) grossly indecent or obscene language[194] designed to intimidate, humiliate or distress

(ii) racial, religious or sex orientation slurs.

(d) display any public sign (or writing or other visible representation in a public place) which contains (c) (i)-(ii)

(3) Where (1) comprises the unlawful harassment by A of a debtor (B),[195] '*harass*' in (2) also includes any:

(a) false claim for the debt;

(b) false claim for unwarranted interest, costs or additional charges of any kind;

(c) false representation that criminal proceedings lie for non-payment;

(d) false representation that A (or his agent) is authorised in some official capacity to claim (or enforce) payment of the debt;

(e) [communication] falsely represented by A (or his agent) to have (or purporting to have) some official character

[192] This is an older word for '*threats*. Today, '*threats'* is more readily understandable in common parlance.

[193] See also Malicious Communications Act 1998, s 1 above.

[194] At present, the word '*insulting*' is used. However, this is too general and can have a very wide connotation (is a tax demand *etc* insulting?).

[195] See also Administration of Justice Act 1970, s 1 above.

In conclusion, crimes of 'harassment' should be a consolidated into one - more closely - defined crime. It should, also, be a crime against the person (and not both this and a public order crime).[196]

20. Other crimes

Finally, there are a few other crimes in criminal legislation to which reference should be made *viz*:

- **Assisting Offenders**. The Criminal Law Act 1967 states, s 4 (*penalties for assisting offenders*) states:

  > (1) Where a person has committed a relevant offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence.
  >
  > (1A) In this [s] and [s] 5 below, "*relevant offence*" means (a) an offence for which the sentence is fixed by law, (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of [5] years (or might be so sentenced but for the restrictions imposed by [s] 33 of the Magistrates' Courts Act 1980).[197]

- **Concealing Crimes or Giving False Information**. S 5 of the 1967 Act (*penalties for concealing offences or giving false information*) states:

  > (1) Where a person has committed a relevant offence, any other person who, knowing or believing that the offence or some other relevant offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable *etc*.
  >
  > (2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he shall be liable etc

These crimes should not be placed in a Crimes against the Person Act. Rather wasting police time (see (2) above) should, obviously, be placed in a Police Act. The others apply generally. Thus, it is better that they placed in Criminal Code, when the 6 Acts I have suggested are further consolidated into the same.

In conclusion, wasting police time should be placed in a Police Act. And, the other 2 crimes above should be placed in a Criminal Code since they apply generally.

21. Substantial Cause/Novus Actus Interveniens (NAI)/Joint Venture

Whether GBH should be elevated to murder (and in what circumstances) has incurred huge amounts of court time and wasted (unnecessarily) large amounts of taxpayer's money since *Vickers* (1957). All this is due to a failure to investigate the legal history properly. There are 2 other issues which threaten to do the same, but which are, actually, very simple, when understood. As to these:

(a) Causation & Novus Actus Interveniens (NAI)

Dealing with causation first, Archbold (2024)17A-8 states: '*As a concept [i.e. causation], it is both tremendously simple and devilishly complex'*. Oh dear, we may as well give up and go. As it is, the criminal law has been around a long time and has never been a problem in criminal law (or civil) until academic lawyers got hold of it. Archbold, then, notes '*While one might be tempted to reach the simple conclusion that causation is a question of fact for the jury, the position is in reality more complicated*'.

But is it?

In the case of murder for example, the pre-requisites are simple: (a) intention (*mens rea*) and (b) an act/omission (killing, the *actus reus*) which must be a '*substantial cause of death.'* If not initially present - or if no longer present due to NAI, A is not guilty. Thus, the 2 cases cited by Archbold evidence this:

- ***White* (1910)**. A poisoned B's drink, but B died from natural causes. Therefore, a pre-requisite for murder was missing (A's act not being a substantial cause of B's death). Nothing difficult here. And, this is not a '*factual causation'*. It is a *legal* one, derived from the fact scenario (i.e. B died from no act of A);
- ***Roberts* (1972)**. A's makes sex advance to B, who jumps from car as a result, injuring herself (i.e. A, indirectly injured B as a result of A's assault). Thus, the legal causation (derived from the fact scenario) is whether the pre-requisites for a crime were fulfilled; they were.[198]

[196] See GS McBain, *The Creation of an English Criminal Code: 6 Acts. Fifth Act - Public Order* (2025) Public Administration Research ('PAR'), vol 14, no 1, pp 1-68 (*free online*).

[197] Prosecution for this crime requires the consent of the DPP, see ss (4) of the same.

Thus, Archbold appears to be making rather a *meal* out of what has, always, been the case.[199] That is, *from the matrix of facts has A satisfied the pre-requisites for the crime (a substantial cause, also, being a pre-requisite)*?

- As for multiple causes, in the case of causation, these are very common, but not relevant as to the pre-requisite of whether A's act was a *substantial cause* of a crime committed against B. The important thing for any lawyer (or judge) is whether - in the often (sometimes bewildering) mass of facts - the pre-requisites for a crime committed by A have been made out; [200]
- As to NAI, this term has, also, been called an '*overwhelming supervening event'* and a '*break in the chain of causation'*. These latter expressions are not accurate and they add nothing;
- In the case of NAI, Archbold simply refers to issues relating to '*thin skull'* (i.e. the victim must be medically taken as found) and to the effects of, later '*medical treatment'*. Yet, the latter, as with 3rd party intervention, is only legally relevant if it *supplants* the pre-requisites for A's criminal liability.

In *Smith* (1959) the court (it is asserted) accurately stated the legal position only in part. A subsequent NAI does not have to be '*overwhelming*'. It simply has to *supplant* A's act such that A's act is, no longer, a '*substantial cause'*. If so, the pre-requisite for A's committing the crime no longer exists. Thus, the court in Smith (1959) accurately (indeed, exactly) stated the correct position: '*if at the time of death the original wound is still an operating and a substantial cause then the death can properly be said to be the result of the wound.'* [201] Further, ever since Russell's work (1st ed, 1819) it has been accepted that the A's '*substantial cause'* does not have to be '*immediate*'. The issue in *Cheshire* (1991) is the same - medical treatment is irrelevant unless it *supplants* A's '*substantial cause*' and, thereby becomes the same, resulting in A not being held to have committed a crime.

In conclusion, simplicity in this area is key. Archbold refers to a 'substantial *and operating* cause'. The latter word is unnecessary. Also, Archbold refers to a '*significant*' cause ('*contributed significantly'*). This is simply a synonymous expression for a '*substantial cause'* - one having a more nebulous core content. Thus, the term '*substantial cause'* is better. Also, a third party act does not have to be '*free and deliberate'*. This is irrelevant.[202] *Thus, for an act to be a NAI pursuant to the criminal law, it must replace (supplant) the pre-requisites required for A to commit the crime*. If not, it is not relevant (not a NAI). Further, Archbold fails to note that a NAI can change the role of A. Thus, A may have been a principal but a 3rd party (who intervenes) may reduce A's role to that of an accessory.

In conclusion, the terms 'NAI' and 'substantial cause' should be solely used in criminal legislation, in order to prevent misleading synonyms or other expressions. And the central issue in the case of a NAI is whether it supplants (negates) one or more of the pre-requisites for A's liability. This simple proposition for NAI should be set out in legislation (it applies especially to crimes of violence, including murder). Further, in evolving factual situations (such as gang violence, with there being a swirl of events and inter-changing participants, as well as the medical aftermath) the core issue tends to be whether the pre-requisites for A's criminal liability are met - or, whether (a third party(ies))(C's) acts have supplanted them. This, being, essentially, a legal issue, it should be left to the judge (although of course, medical evidence can be provided to show from what cause(s) death, medically, resulted). This will simplify this area of law greatly.

(b) <u>Self Induced Intoxication</u>

A huge number of criminal cases before the courts in modern times result from acts committed by A when under self-induced intoxication. When in such a self-induced state, it is, often, difficult for a court to determine whether A was capable of acting '*intentionally*'. Thus - absent clear evidence of intention - it should be presumed in law that a

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[198] See also *Taylor* (2016), *Wilson* (2018) and *Wood* (2021). The pre-requisites for a crime were not made out (i.e. A's act had not procured B's death).

[199] Thus, splitting things out in 4 elements, as Archbold does, is unhelpful, see Archbold (2024) 17A since (b) and (c) are one - and (a) simply refers to the factual background (always present) and the legal consequence (always needed to establish a crime). Nothing '*devilishly*' difficult here.

[200] The '*thin skull'* rule is simply a legal principle (no more) that A must take B as he finds him and this does not reflect the pre-requisites generally. This is not a matter of factual causation, but legal causation. No different to the fact that, if it turns out that B is a child, a different crime made have been committed to that of an adult.

[201] Archbold (2024) 17A-17. 'The position would therefore appear to be that where the original conduct remains a substantial cause and operating cause of the result, notwithstanding the medical treatment, the chain will not be broken.' One would agree, save that the word '*operating*' is otiose.

[202] Archbold 17A-16 states this but the 2 main cases he cites (*Pagett* (1983) and *Girdler* (2009)) are only examples showing that the death does not need to be the immediate consequence of A's act. So too, for example, if A injects B with an overdose heroin, intending to kill. If B, under the influence of it, steps off the road and is killed by a passing bus, the latter is the immediate cause of death, however, it does not supplant the pre-requisites of A's crime being satisfied.

self-induced intoxicated person is acting *recklessly* when his act otherwise results in a crime, especially those of violence. This is not unreasonable, given that A places himself in a mental state where his/her '*intention*' cannot otherwise be accurately determined. The formulation of this in *DPP v Majewski* (1976) by Elwyn-Jones LC would seem useful *viz*:

> 'If a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition…It is a reckless course of conduct and recklessness is enough to constitute the necessary *mens rea* [in such cases].'

Thus, this should be formulated in legislation, to reduce the length of trials and endless debate and caselaw - in which judges simply pick on synonyms or they confuse the fact that *intention* is (legally) different from *recklessness* (and has been since Babylonian times).

1. Self-Intoxication

(1) If a person (A) is accused of homicide or violent injury and:

(a) A's act occurred when A was self-intoxicated

(b) if it cannot be proved by the prosecution that A acted intentionally

(c) A shall be presumed by law to have acted recklessly

(d) if the self-intoxication is a substantial cause of A's act.

(2) The burden to disprove (1)(c) or (d) lies on the defence.

(3) The prosecution (or defence) may submit evidence to prove (or disprove) self-intoxication, including medical evidence.

(4) '*self - intoxication'* means that A was under the influence of:

(a) non-medicinal drugs or alcohol[203] or

(b) A intentionally (or recklessly) overdosed on medicinal drugs such that A lacked sufficient mental capacity to form a distinct intention.

(5) '*self*' means that A took (4)(a) voluntarily and was not acting under duress.[204]

22. Need for the Criminal Law to Exist in Modern Social Realities

The current problem of leaving criminal law from 1275 on the books is that it is often wholly out of kilter with modern realities, including modern medical advances, which obviate the need for lawyers (and judges) to guess at things such as mental illness, cause of homicide, violent injury *etc*. Thus:

(a) Insanity, Diminished Responsibility (DR), Infanticide

The Trial of Lunatics Act 1883 is nearly 150 years old. Yet, it still applies. Today, whether a person is insane - or suffering from DR (including in the case of infanticide) - should be pleaded as a *preliminary issue* by the defence before a professional judge (preferably one who is, also, a qualified medic). The judge should decide the matter on the basis of 2 expert medical reports, by forensic experts who specialise in this area. This is more professional (less amateurish) than the current approach of going through a hugely expensive trial in the case of lunacy, only for it to be concluded, by special verdict, that the killer (A) had no capacity. Further, in the case of DR (and infanticide which should be treated as manslaughter if DR is found) this would likely result in no trial anyway (the defence simply presenting a plea of manslaughter). The same should apply in the case where a defence to killing is that B (the victim) died after consenting to *bona fide* medical treatment (including where the same was administered when in B's best interests if he was otherwise incapable of giving consent). All this would save the taxpayer a huge amount of money and court time.

(b) Non- Accidental Death/Violent Injury/Sports/Sex Acts/Abortion/Self Intoxication/FGM

Medical reports should, also, be required in the case of:

- non-accidental injury to a child (or a vulnerable person) to indicate the precise cause of death in order to determine whether the same was '*unlawful'*;
- the categorization of violent injuries into GBH (VSI), ABH (SI) and assault (including where arising from poisoning/choking/child cruelty);
- the above to include where the same arises from sports/sex acts/corporal punishment;
- abortion, *vis-à-vis* whether the child was '*unborn*' or not, instead of relying on old Victorian caselaw;

[203] See Archbold (2024) 17B-56.

[204] Ibid, 17B-63 and *Field* (2021).

- self-intoxication and FGM.

All this would save the taxpayer a huge amount of money and court time.

(c) Abolishing Juries - Crimes

The criminal law is now so complicated that even the Supreme Court is making mistakes or having to revise previous (longstanding) caselaw, including their own. Few criminal lawyers understand it - let alone members of the general public, many of whom may not have a fluent understanding of the English langauge. The cost and bureaucracy in handling juries (many of whom do not turn up) is a colossal expense to the taxpayer. Juries in all criminal (and civil) trials should be abolished, matters being dealt with by professional judges.

(d) Abolish Magistrates Courts

Most magistrates are members of the public, with a rudimentary knowledge of criminal law and very much dependent on the court clerk, who may, also, be inexperienced. Also, the caselaw in the magistrates' court is demonstrably inferior to that of professional judges in the Crown Court, which is to be expected. Further, the whole bureaucracy of '*either way'* categorization is hugely bureaucratic. To put it another way, one would estimate that the time taken by a professional judge (absent a jury) to dispose of a criminal case is (likely) 5 times faster than amateur judges. Thus, consideration should be taken to merging all magistrates' courts into the Crown court, with there being only 2 categories of judge *viz*.

- Crown Court Judge
- Deputy Crown Court Judge (the latter being professional judges presently in the magistrates' court).

This would dispense with all old magistrates' caselaw, rules, bureaucracy *etc* at a stroke - as well as provide a clear '*career path'* for more junior criminal judges. Further, consideration should be given to merging the Crown Court with the High Court - so that there is no competing jurisdiction and so that civil judges can, also, sit on the criminal side where required. This would enable there to be, say, 120 court buildings in England (dealing with civil and criminal law) [205] with professional judges handling everything. This would end amateurism in the criminal sphere and move it from Victorian times into the 21st century.

23. Conclusion

This is the sixth article dealing with the consolidation of criminal law. It may be summarized as follows:

- All c. 305 pieces of criminal legislation dealing should be consolidated into 6 Acts. Then, into one Criminal Code (with 3 parts) as well as a Criminal Procedure Act (CPA) and a Criminal Justice Act (CJA);
- All obsolete criminal legislation (of which there are copious amounts) should be repealed. So too, all obsolete common law crimes, with the remainder being placed in the legislation.

There is nothing remotely difficult, or onerous, about the above. The reason why this has not been done is due to a failure to consider all criminal legislation as a whole (also, common law crimes). Also, civil service sloth and vested interests. The loss to the taxpayer was (and is) truly enormous.

24. Consolidating all the above crimes into a Crimes against the Person Act

All the above crimes listed in this article - as modernized and shorn of obsolete material - could (easily) be consolidated into a *Crimes against the Person Act*, see below.

Appendix 1

Draft Crimes against the Person Act

Contents

[205] Wales should have its own criminal and civil law system (merging all magistrates' and county courts into a High Court, with professional judges sitting in various regions) with a right of appeal to the Court of Appeal (and Supreme Court). This would speed up things and taking out 5m people (the population of Wales is, also, likely, to increase). It would be much cheaper than the present position.

[206] Homicide, in the criminal context, is a *generic term* to cover the crimes of murder and manslaughter, although '*homocidium'* is the latin to kill a person (*homo caedere*) translated as '*man slayer*' in English, see **1(a)**. Thus, the word '*homicide*' is the generic, '*manslaughter*' the specific.

5. Application
6. Interpretation

Part 2 - No Homicide

7. Accidental or negligent killing (no crime)
8. Killing by child under 10 (lack of capacity)
9. Killing by insane person (lack of capacity)

Part 3 - Murder reduced to Manslaughter

10. Suicide Pact (SP)
11. Diminished Responsibility (DR)
12. Loss of Self Control (LSC)

Part 4 - Defences to Homicide

13. Reasonable Self Defence
14. *Bona Fide* Medical Treatment (BFMT)
15. *Bona Fide* Assisted Death (BFAD)
16. Consent no Defence (sports, sex acts *etc*)

Part 5 - Violent Injury

17. Violent Injury
18. Categories
    1. Very Serious Injury (i.e. GBH now VSI)
    2. Serious Injury (i.e. ABH now SI)
    3. Assault (i.e. Common Assault)
    4. *Assault* *(i.e. Threatened Battery)*[208]

[]. Poisoning [209]

[]. Suffocation & Choaking[210]

19. Torture
20. No Violent Injury
21. Defences to Violent Injury
22. Consent
23. Application
24. Interpretation

Part 6 - Illegal Detention

25. Unlawful [False] Imprisonment
26. Kidnap
27. Slavery, Servitude *etc*
28. Human Trafficking
29. Exploitation
30. Committing Crime with Intent *etc*
31. Interpretation

Part 7 - Intimidation

32. Threat to Kill

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[207] See Domestic Violence, Crime and Victims Act 2004, s 5. As indicated in the text, this should be covered by manslaughter and not be a separate crime. It, also, refers to '*serious physical harm'* equating this to GBH. To the extent it does, this should be covered by GBH/ABH.

[208] In the text it is asserted this category is unnecessary and should be abolished.

[209] There are 2 sections in the OPA 1861 on this. However, there is no need to make this a distinct crime, since it is a form of violent injury.

[210] Ibid.

33. Harassment
34. Stalking
35. Controlling or Coercive Behaviour
36. Interpretation

Part 8 - Abortion

37. Unlawful Abortion
38. Assisting Unlawful Abortion
39. Interference with Abortion Services[211]
40. Interpretation

Part 9 - Crimes relating to Children

41. Concealing Birth
[] Infanticide *under 1*[212]
[]. Child Exposure under 2 [16][213]
42. Exposing Child to Burning under 7 [16][214]
43. Child Cruelty *under 16*[215]
44. Giving Child Alcohol *under 5 [16]*[216]
45. Selling Child Tobacco *under 18*[217]
46. Selling Child Aerosol Paint under 16
47. Child Begging under 16
48. Child Performances *under 16*[218]
49. Child Safety at Entertainments under 16
50. *Child Employment* *under 16*[219]
51. Child Tattooing under 18
52. FGM under 16 [18]
53. Surrogacy Arrangement
54. Surrogacy Advert
55. Child Abduction by Parent under 16
56. Child Abduction by Other
57. Interpretation

Part 10 - Incohate Crimes

58. Attempt
59. Conspiracy
60. Incitement
[]. Procurement [220]

Part 11 - Other Crimes

[211] See Public Order Act 2023, s 9 (*interfering with abortion services*).

[212] As previously noted, this crime is no longer needed. It should be dealt with under abortion.

[213] Presently, the ages specified seem too low. Generally, under 16 should be the age, it is asserted (I have put this in brackets). Further, this distinct crime should be merged with the crime of child cruelty since the latter refers to exposure anyway.

[214] This is not needed as a separate crime, being dealt with under manslaughter and GBH.

[215] This should be absorbed in the Domestic Violence, Crime and Victims Act 2004, s 5.

[216] This should be in the Licensing Act 2003.

[217] This should be covered by legislation dealing with tobacco/smoking.

[218] This should be in employment legislation.

[219] Ibid.

[220] This old word meant 2 different things: (a) incite; (b) assist (i.e. provide/bring out). It is better to avoid it in modern legislation.

Part 1 - Homicide

1. **Murder**

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally

(c) kills another person (B)[226]

or

(d) A inflicts GBH [VSI][227] on B who dies from it,

(e) A reckless whether B dies or not.[228]

2. Manslaughter

(1) It is a crime if a person (A):

(a) unlawfully and

(b) recklessly (if s (1)(d) and (e) do not apply)[229]

(c) kills another person (B).

(2) It is a crime if a person (A):[230]

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[221] See Criminal Law Act 1967, s 4. Also, Archbold (2024) 18-38.

[222] Ibid s 5 (it is better to use the wider term '*financial gain'* used in sex crimes).

[223] This should be placed in a **Police Act**.

[224] I have put the 2 sections on jurisdiction in the OPA 1861 in this draft legislation. However, they are very antiquated and this issue, for all crimes, should be covered in a Civil Procedure Act (CPA).

[225] See **18.**

[226] Person (correctly) excludes an unborn child or monstrous birth. This can be clarified in a definition of a '*person*', see s 6 (2).

[227] I have suggested that modern terminology be employed since it seems clear that many lawyers do not know that GBH means '*very serious harm'* (not just serious).

[228] It is suggested this should be the only case of elevation to murder, since it does not (by presumption of law) change the intention of A. *Intention* to commit GBH and/or awareness of the risk of death should be insufficient. See **3**.

[229] Cases such as *Stone and Dobinson* (1977) and *Adomako* (1995) indicate that negligence *per se* (i.e. simple negligence, negligence *simplex*) is not a crime, see also McBain, n 3, p 137. Further, '*gross negligence'* as a term has given place to '*recklessness*'.

[230] This replaces the crime of infanticide, replacing it with manslaughter.

(a) intentionally

(b) causes the death of her child (B)

(c) if B was under 12 months at the time

and

(d) a substantial[231] cause of B's death was that

(e) the balance of A's mind was disturbed by reason of

(f) not having fully recovered from (or the effect of lactation after) B's birth.

(3) If (2) is found not to apply such does not preclude:

(a) A being charged under s 1 (*murder*) or 2(1) *(manslaughter*) or

(b) s 9 (*insanity*) applying.[232]

3. <u>Corporate Manslaughter</u>

(1) It is a crime if an organization (A):[233]

(a) [recklessly] causes a person's (B's) death[234]

(b) due to the way A's activities were managed (or organized) by its senior management and

(c) such was a substantial cause of B's death.

(2) In Scotland, this crime shall be called '*corporate homicide'* and be indictable only in the High Court of Judiciary.

(3) Appendix [ ] applies.[235]

4. <u>Non-Accidental Death - Child or Vulnerable Person</u> [236]

(1) It is a crime if a person (A):

(a) was a member of B's household

(b) A and B had frequent contact

(c) at the time of B's death there was a significant risk of A causing VSI [GBH] to B and

(d) B dies as a result of A's unlawful act.

(2) It is a crime if a person (A):

(a) was a member of B's household

(b) A and B had frequent contact

(c) B dies as a result of the unlawful act of another person (C) to which (a) and (b) also applied

and

(d) at the time of B's death there was a significant risk of C causing VSI to B (the '*risk*')

(e) A was (or ought to have reasonably been) aware of this risk

(f) A failed to take steps a reasonable person would have taken to protect B from the risk and

(g) B died as a result of VSI by C.

(3) If A was not the mother (or father) of B:

(a) A may not be charged with a crime under (1) or (2) if

(b) A was under 16 at the time of the act that caused B's death or

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[231] In the case of murder and manslaughter, A is only liable if his act was '*a substantial cause'* of B's death. This word is, also, used in the context of corporate manslaughter. This should apply here, *re* infanticide (which, it is argued, should now be manslaughter).

[232] See Infanticide Act 1938, s 1 (3).

[233] The Corporate Manslaughter 2007 Act refers to an organization '*to which this section applies'* and then defines the organizations in ss (2).

[234] The Act says: '1 (a) causes a person's death and (b) amounts to a *gross breach of the relevant duty of care* [i.e. gross negligence] owed by the organization to the deceased'. It is argued that '*gross negligence'* has been (generally) replaced with the concept of recklessness. See also *Information C-re v Islington LBC* [2003] LGR (*recklessly using data, instead of grossly negligent in using data*), Archbold 17B-32.

[235] See Corporate Manslaughter Act 2007, ss 2-25. This could be greatly simplified.

[236] As indicated in the text (see **4**), the Domestic Violence, Crime and Victims Act 2004 is not well formulated. Further, this crime should be one of manslaughter (as well as GBH, when no death). This is to keep things simple. Further, *'vulnerable adult'* should be '*VP'* (vulnerable person) as in Sex Crimes legislation, to prevent mis-match. As it is, I have set things out simplifying the 2004 Act wording, however,

(c) for the purposes of 2(f), A could not have been expected to so act before attaining 16.

(4) ***Interpretation***.[237]

(a) '*B'* refers to: (a) a child under 16; or (b) a VP

(b) A (and C) is to be regarded as a '*member*' of B's household even if A (and C) does not live in it if:

(i) A (and C) visit it so often, and for such periods of time, that

(ii) it is reasonable to regard A (or C) as a member of B's household or

(iii) B lived in different households at different times.

(c) '*B's household*' refers to [means] the household:

(i) in which B was living

(ii) at the time of the act that caused B's death.

(d) an '*unlawful*' act is:

(a) one that constitutes a crime [238] or would do

(b) but for s 8 (*child under 10*) or s 9 (*insanity*) applying to A.

and '*unlawful act'* includes where VSI to B results from A (or C):

(i) assaulting or

(ii) ill-treating (physically or otherwise) or

(iii) neglecting or

(iv) abandoning or

(v) exposing B or

(vi) [causes or procuring] [239] *such.*

(e) '*act' includes a course of conduct. It, also, includes omission.* [240]

(f) **'***VP***'** means a '*vulnerable person'* being a person aged 16 or over

(i) whose ability to protect himself from violence, abuse or neglect

(ii) is significantly impaired as a result of

(iii) physical (or mental disability) or illness or old age or otherwise.[241]

5. Application [242]

(1) ***Act or Omission etc***. The killing of B in s 1 or 2 may be:

(a) by act or omission [243]

(b) direct or indirect [244]

(c) random [245]

(d) by way of transferred malice[246]

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[237] Other provisions in the Act can be set out in an *Appendix.*

[238] As indicated in the text, '*unlawful*' needs to be much more specifically defined with regard to specific criminal legislation.

[239] The word '*causes*' would seem superfluous. '*Procuring'* should be replaced by the words '*brings about'*.

[240] This is not required, being covered by s 5(1), see below.

[241] This should match up with Sex Crimes legislation which refers to a vulnerable person, see GS McBain, *The Creation of a UK Criminal Code: 6 Acts. First Act - Sex Crime*s (2025) International Law Research ('**ILR**'), vol 14, no 1, pp 1-69.

[242] It should be noted that, changing what must be changed, these should also apply to Violent Injury (GBH, ABH, common assault) since homicide was always an *aggravated battery* from early times.

[243] *Gibbons and Proctor* (1918) 13 Cr App R 134. See also Archbold (2024) 19-5 and old cases on prison jailers (starving of prisoners, insanitary conditions *etc*). Killing by neglect was usually treated in the caselaw as *omission*, although this is debatable.

[244] Archbold (2024), ch 19-5 (*through medium of innocent agent*).

[245] e.g. shooting in a crowd (example of Blackstone (1765), see McBain, n 3, p 89). Or negligently (or recklessly) hurling a slab off a motorway bridge.

[246] e.g. A shoots at B but kills C by mistake. The problem of the term '*transferred malice'* is that no malice (hatred) is required and that this is a constructive (implied) presumption of law. Also, the *intention* of A to kill B does not have to actually switch to C, for it to apply (A may kill C by accident/mistake). See cases from 1240 cited in McBain, n 3, pp 171-2.

(e) held to have occurred whether:

(i) B's body is found or not;[247]

(ii) there is a *post mortem* (or *post mortem* report) on B or not.[248]

(2) ***Substantial Cause***. A's killing of B in s 1 or 2 must be:

(a) a substantial cause [249] of B's death, [250]

(b) but need not be the sole (or primary or immediate) cause. [251]

(3) ***Novus Actus Interveniens (NAI)*** [252]

(a) A's killing of B in s 1 or 2 is not affected by a NAI unless it replaces

(b) the intention of A to kill B (or recklessness in such killing)

(c) A's involvement being a substantial cause of B's death in (2).[253]

(4) ***Matters not Affecting Killing***. A's killing of B in s 1 or s 2 is not affected by:

(a) B's medical condition at the time of the act;[254]

(b) B, *bona fide*, refusing medical treatment;[255]

(c) B's subsequent medical treatment being ineffective to prevent death, unless (3) applies;[256]

(d) any belief of A whether B has died or not.[257]

6. Interpretation

(1) '*organization*' means a body specified in *Appendix A[]*.[258]

(2) '*person*' does not include:

(a) an unborn child (as defined in s 40) or

(b) a monstrous birth.[259]

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[247] Archbold (2024) 19-9.

[248] Ibid.

[249] Archbold (2024) 19-6 refers to '*contributed significantly'*. However, '*substantial cause'* is better since '*cause*' refers to origination and matches with dangerous driving wording. Archbold also states '*As a concept, it is both tremendously simple and devilishly complex'*. The latter part is nonsense, it has been made so by poor legal analysis and a desire to make money.

[250] This, then, matches up with corporate manslaughter.

[251] '*Substantial cause'* follows the position on dangerous driving. It is important the two match up, see also Archbold (2024) 19-6. For example, A intentionally gives B a lethal dose of heroin, B (affected by it) walks into the road and is killed by a car. The car is the primary (immediate) cause of death, but B would not have so died but for the intent and act of A. See also *Paggett* (1983) (B used as shield), see Archbold (2024) 19-7. A word often missed out is '*immediate*'.

[252] Also, referred to as a '*new independent act'*, '*break in the chain'* or '*overwhelming supervening event*.' The latter 2 descriptions are synonyms for a NIA. However, they are not accurate and should be avoided. See also Archbold (2024) 17A-8 to 18.

[253] Surely, this is the correct position. There are 2 pre-requisites for murder (a) intent; (b) killing pursuant to (a). If a NAI replaces (a) or (b), one pre-requisite is missing; hence no crime. The same applies to manslaughter.

[254] For example, A (intending to ill) imprisons and starves B. The fact that B has a heart condition (is very elderly *etc*) and dies more quickly cannot change the crime, by virtue of simply accelerating death or prolonging it for a while, see Archbold (2024) 19-8 (also 19-12, life support switched off or prompt medical treatment would have prolonged death only for a while). In this area, there is a danger of caselaw and analysis being too detailed over what should be a factual matter in the matrix of facts that A's act pursuant to his intention to kill must be a *substantial cause* in the death.

[255] e.g. because they believe it will not help or for religious reasons, see Archbold (2024) 19-12. Obviously, if they act wholly unreasonably (by way of malice) it may be an NAI.

[256] If B is taken to hospital and would not otherwise have died but for reckless treatment, the killing element required for murder (or manslaughter) may be superceded by the same e.g. A *intends* to kill B but administers a light blow insufficient to kill, B in hospital dies because an untrained doctor (incorrectly) prescribes an overdose of morphine which kills B, the pre-requisite of A killing B is not met.

[257] The fact of death (being killed) is (and should not be) connected to the belief of A since this has never been a pre-requisite e.g. A throws B off a cliff intending to kill him. A leaves thinking he has immediately killed B, but B dies 2 hours later during surgery. This latter even is irrelevant providing there is no NAI. That is, the *fact* of death is not related to A's *belief* of death. It is a non-point. See also Archbold 19-20 and *Meli (Thabo) v R* (1954). Also, 17A-4 and 17-B-9.

[258] This will put the Corporate Manslaughter Act 2007 material or organisations to which it applies into an Appendix.

[259] This should refer to the section dealing with abortion, see s 40. See also Archbold (2024)19-15 (it contains old Victorian caselaw, no longer necessary).

(3) "*relevant duty of care*" has the meaning given in *Appendix [].*[260]

(4) "*senior management*", in relation to an organisation, means the persons who play significant roles in:

(a) making decisions about how the whole (or a substantial part) of its activities are to be managed (or organized), or

(b) the actual managing (or organizing) of the whole (or a substantial part) of those activities.

(5) '*transferred malice'* is when A intends to kill one person (B) but, by accident or mistake, kills another (C).[261]

(6) '*unlawfully*' in s 1 or 2 excludes the killing of:

(a) an enemy *alien* in battle *during war time*

(b) *a person in battle pursuant to the Treason Act 1351 (the crime of levying war*) [262]

(c) *where the Armed Forces Act, s [] applies.*[263]

Part 2 - Not Homicide

7. Accidental or Negligent Killing

(1) The accidental (or negligent) killing of a person is not a crime.[264]

8. Killing by Child under 10

(1) It is conclusively presumed no child under 10 can be guilty of any crime.[265]

(2) If a person (A):

(a) incites[266] a child under 10 (B) to kill pursuant to s 1 or 2

(b) A shall be held liable as the principal but not B.[267]

9. Killing by Insane Person[268]

(1) If A is held to have committed [269] a crime in s 1 or 2

(a) but a court holds A was insane at the time

(b) it shall return a special verdict of '*Not Guilty by reason of Insanity'*. [270]

(2) A special verdict in (1)(b) shall only returned

(a) on the written (or oral) evidence of 2 (or more) registered medical practitioners

(b) at least one of whom is duly approved.[271]

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[260] See fn 235.

[261] See e.g. Kenny (in 1902), see McBain, n 3, p 110. 'If a man shoots at A with the intention and desire…of killing A, but accidentally hits and kills B instead, this killing of B is treated by the law not as an accident but as murder.' Random killing is not the same as transferred malice.

[262] As noted in the text, this crime is no longer required, since a civil war to dethrone the sovereign is now unlikely/impossible (since 1688 only Parliament can dethrone the sovereign). The death sentence as a justifiable killing no longer applies. Thus, reference need not be made to it.

[263] Killing a person in battle (whether an enemy alien or British subject, which should be irrelevant) should now be placed in modern Armed Forces legislation.

[264] This is an *exception*, not a *defence* (hence it is not recorded in Pt 3 but here in Pt 2).

[265] See CYPA 1933, s 50 '*It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence'*. This, also, is an *exception*, not a defence. However, suppose a child actually does (i.e. it seems clear that the child actually knew what it was doing)? There should be a way of sanctioning the same, to protect society.

[266] The old word '*procures*' should be dropped as being less understandable.

[267] The same applies where A incites an *insane person* to commit murder. See also Archbold 19-2. Thus, this s should be a general one applying to all crimes in the end (including those relating to violent injury).

[268] Trial of Lunatics Act 1883, s 2 (*special verdict where accused found guilty, but insane at date of act or omission charged, and orders thereupo*n). '(1) Where in any indictment or information any act or omission is charged against any person as an offence and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused is not guilty by reason of insanity.' See also Archbold (2024) 4-535.

[269] It is argued in the text that the wording in the Trial of Lunatics Act 1883 (see also Criminal Procedure (Insanity) Act 1964) is wholly out of date. Further, today, given psychiatric advances, whether A is insane should be decided as a preliminary legal issue, prior to a trial. If so held, then, a special verdict of '*guilty of homicide but insane'* should be brought in (unless the prosecution assert that, despite being insane, he was not responsible for the killing (which would be very rare)).

[270] It should be noted that insanity is a complete defence to every crime, albeit is is not generally applied other than to insanity. Thus, it should be a *general* provision in any Criminal Code. Also, it is pointless holding a person NG by reason of insanity for a *specific crime*, it applies generally.

(3) [refers to Mental Health Act 1983 s 1 (2)].[272]

(4) It is for the defence to establish insanity on the balance of probabilities.

(5) A court may require (or allow) the prosecution (or the defence) to raise the issue of insanity.[273]

(6) If insanity is held inapplicable to A:

(a) it does not preclude s 11 (*DR*) or 12 (*LSC*) being pleaded in respect of A

(b) and (5) shall apply to (a) being pleaded.[274]

Part 3 - Reduction of Murder to Manslaughter

10. Suicide Pact (SP)

(1) It is manslaughter under s 2 and not murder under s 1 if:[275]

(a) A killed B pursuant to a SP between them or

(b) a third person (C) killed B pursuant to a SP between A and B.

(2) The defence must prove (1).

(3) '*SP"* means a common agreement between 2 (or more) persons having, for its object, the death of all of them (whether or not each is to take his own life) but:

(a) nothing done by a person who enters into a SP

(b) shall be treated as done by him in pursuance of a SP unless

(c) it is done while he has the settled intention of dying in pursuance of the SP.

11. Diminished Responsibility (DR)

(1) It is manslaughter under s 2 and not murder under s 1 if:[276]

(a) A (whether as principal or accessory)

(b) suffered from DR when he killed B.

(2) DR means that A suffered from an abnormal mental functioning (an AMF)

(a) arising from a recognised medical condition

(b) an AMF that substantially impaired A's ability to do one (or more) of the following:

(i) to understand the nature of A's conduct

(ii) to form a rational judgment

(iii) to exercise self-control

and

(c) the AMF provides an explanation for A's acts (and omissions) in killing B.

(3) An AMF provides an explanation for A's conduct in 2(c) if it:

(a) caused or

(b) it was a [significant cause] *in causing*

(c) A to carry out that conduct. [277]

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[271] See Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, s 1. Also, Archbold (2024) 4-536. This out of date. Today, 2 medical experts in the area of insanity would be appropriate.

[272] This should be set out.

[273] This must be correct. In a humane society - and from the earliest times - as with a child, justice held that an insane person should not be convicted of any crime due to lack of sufficient rational capacity. Thus, even if defence or prosecution do not wish to raise a defence (as *parens patriae* for the vulnerable) a judge (in the rare case where he/she is concerned about this) should have the right to act, and require evidence. The same applies where a child is prosecuted and it is uncertain whether the same is under 10 or not. The judge should (and must) intervene as guardian of the vulnerable. This is, also, appropriate where a higher court can overrule a judge. As it is, it is clear that, in olden times (including England) insane persons (and children) were put to death because there was no one to defend them.

[274] See Criminal Procedure (Insanity) Act 1964, s 6. It does not refer to a LSC. However, this would seem appropriate.

[275] See Homicide Act 1957. This makes it clear that murder was committed (as the Homicide Act 1957 states '*It shall be manslaughter, and shall not be murder'*) but there is a mitigating factor (a SP) resulting in reduction (it is not a *defence* as such). I have modernized the wording in the 1957 Act slightly.

[276] I have tidied up the wording from the Homicide Act 1957 s 2 so that it matches up with s 12 (*Loss of Self-Control*) below. Also, an acronym (DR) would be useful.

(4) The defence must prove (2).[278]

(5) The fact that A is, by virtue of this s 11, not liable to be convicted of murder:

(a) shall not affect the question whether B's killing amounted to murder under s 1

(b) in the case of any other party to it.[279]

12. Loss of Self-Control (LSC) [280]

(1) A court shall hold it to be manslaughter and not murder under Part 1 if:

(a) A (whether as principal or accessory)

(b) suffered from a LSC when he killed B.

(2) LSC means that A suffered from:

(a) a LSC;

(b) one that had a qualifying trigger (see (9)) and

(c) a person of A's:

(i) sex and age,

(ii) with a normal degree of tolerance and self-restraint and in the circumstances of A

(iii) might have reacted in the same (or a similar) way to A.

(3) It does not matter whether the LSC in (2) was sudden or not.

(4) The reference to "*the circumstances of A*" in (2)(c) is a reference to all of A's circumstances:

(a) except those whose only relevance to A's conduct is that

(b) they bear on A's general capacity for tolerance (or self-restraint).

(5) If, in doing (or being a party to B's killing), A acted in a considered desire for revenge, (1) shall not apply.

(6) On a charge of murder under s 1, if sufficient evidence is adduced:

(a) to raise an issue with respect to the defence under (1),

(b) the jury must assume the defence is satisfied

(c) unless the prosecution proves beyond reasonable doubt it is not.

(7) For the purposes of (6), sufficient evidence is adduced to raise an issue with respect to the defence if:

(a) evidence is adduced on which

(b) in the opinion of the trial judge,

(c) a jury, properly directed, could reasonably conclude the defence might apply.[281]

(8) The fact that A is, by virtue of this s 12, not liable to be convicted of murder under s 1:

(a) shall not affect the question whether the killing amounted to murder

(b) in the case of any other party to it.[282]

(9) '*Qualifying trigger*'. A LSC had a qualifying trigger if it was attributable to:

(a) A's fear of serious violence from [by] B against A (or against another identified person) or

(b) to thing(s) done (or said) which:

(i) constituted circumstances of an extremely grave character and

(ii) caused A to have a justifiable sense of being seriously wronged or

(c) to a combination of (i) and (ii) above.

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[277] It would be better to refer to '*a significant cause'* rather than to '*significant contributory factor'* as at present in the Homicide Act 1957 s 2 (4) since the first is used in other legislation. If so (a) would not be required and this could be re-phrased to state '*if it was: (a) a substantial cause; (b) of A's carrying out that conduct.'*

[278] This matches up with the suicide pact wording.

[279] See, also, Archbold (2024) ch 19-79.

[280] See Coroners and Justice Act 2009, ss 54-5. Also, Archbold (2024) ch 19-54-65. I have tidied up the wording so that it matches up with DR as it should. The current wording is poor.

[281] This ss would not appear necessary.

[282] See also Archbold (2024) ch 19-79.

(10) In determining whether LSC had a qualifying trigger, the following are to be dis-regarded:[283]

(a) A's fear of serious violence (or of being seriously wronged)

(i) if caused by a thing

(ii) A incited to be done (or said)

(iii) for the purpose of providing an excuse to use violence or

(b) the fact that a thing done (or said) constituted sexual infidelity.

Part 4 - Defences to Homicide

13. Reasonable Self Defence [284]

(1) It is not a crime pursuant to s 1 or 2 [285] if:

(a) A used reasonable force

(b) in the circumstances[286]

(c) when defending himself (or another person, C) from attack or

(d) protecting A's (or C's) property (whether real or personal).

(2) Whether (2) applies is a matter of fact.[287]

14. Bona Fide Medical Treatment (BFMT)

(1) It is not a crime pursuant to s 1 or 2, if B dies as a result of:

(a) BFMT that

(b) B has consented to or

(c) which was required in B's best interests and he was otherwise incapable of giving consent.[288]

15. Bona Fide Assisted Death (BFAD)

(1) It is not a crime pursuant to Part 1 if B dies as a result of a BFAD. [289]

(2) BFAD means []

16. **Consent no Defence**. It is no defence to s 1 or 2 that B consented to being killed including where B:

(a) consented to being killed:

(i) as part of a sex act [290] or

(ii) for financial gain to any person, including A.[291]

(b) consented to playing a sport or game (lawful or not);[292]

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[283] I have tidied up the wording.

[284] This should state the Criminal Justice and Immigration Act 2008, s 76. It refers to the common law of self-defence. Also, the Criminal Law Act 1967, s 3. However, both should now be contained in 1 section. So too, the common law of self defence in *Palmer* (1971), since this case accurately reflects the modern common law position. S 76 was amended by the Crime and Courts Act 2013 to deal with property. This, also, should be contained in one section See also Archbold (2024) 19-38a and 19- 45-50. At present, all this material far too voluminous and confusing whereas for many centuries the issue was very simple (and a matter of fact).

[285] Self defence, like accident, was a complete defence.

[286] See e.g. CLA 1967, s 3 (*use of force in making arrest etc*): '(1) A person may use *such force as is reasonable in the circumstances in the prevention of crime*, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. See also PACE 1984, s 117 (*police can use reasonable force*). The OPA 1861, s 38 is obsolete and should have been repealed when the CLA 1967, s 3 was enacted.

[287] Kenny in 1902, see n 34, stated: 'even violent felonies should not be resisted by extreme violence unless it is actually necessary'. See McBain, n 3, p 113.

[288] However, it would be murder for example, if a doctor or other (A) gives B medical treatment intending to kill the same e.g. A tells B (falsely) that he/she has cancer and B dies. Or B, intending to effect GBH on B (cuts off a leg unnecessarily) is reckless whether B dies. If A kills B through medical negligence, this would be manslaughter.

[289] This will reflect the wording of any Assisted Dying Act.

[290] For example, as part of any sexual act (including participation in a '*snuff*' movie or as part of bondage or of being killed in an act of cannibalism). Cf. Domestic Abuse Act 2021.

[291] i.e. being killed, for another to secure an insurance payout.

[292] Thus, a duel is still made unlawful. So too, things like very violent unlawful sports or activities (such as drinking games with dangerous dares). Even though engaging in these, B is not consenting to others killing him.

(c) consented to corporal punishment (lawful or not).[293]

Part 5 - Violent Injury

17. Violent Injury

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally (or recklessly)

(c) inflicts

(d) physical injury [294]

(e) on another person (B).

(2) The crime in (1) may apply to an unborn child of B (being C) if:

(a) such was known to A or

(b) a reasonable person would have so perceived and

(c) C was, at least, [28 weeks] old. [295]

(3) If violent injury in (1) occurs to:[296]

(a) a PO acting in the execution of his duty (or a person assisting a PO in such)[297] *or*

(b) an emergency worker or [298]

(c) in the course of religious, racial or sex orientation hatred,[299]

an aggravated sentence shall apply.

18. Categories

(1) There are 3 categories of violent injury in s 17:

(a) Very Serious Injury ('**VSI**')

(b) Serious Injury ('**SI**')

(c) Assault [300]

(2) VSI means injury which is life threatening. [301]

(3) A Table in a statutory instrument shall set out the nature of the injuries falling within (1)(a)-(c).

(4) The police shall provide the prosecution and the court with a medical certificate ('**MC**')

(a) indicating the category in (1)

(b) which MC shall be:

(i) completed by a qualified police forensic medic or doctor and

(ii) accompanied by police (or hospital) photos of the injury.

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[293] This is simply to align with the lesser assaults of GBH, ABH and common assault, see s 22.

[294] Up until modern times, any psychiatric injury would not have been included. This should remain so, and any mental injury should be treated as deriving from harassment (threats *etc*).

[295] See Infant Life (Preservation) Act 1929 (*prima facie proof that child capable of being born alive*). This would seem necessary since there should be evidence that the child was capable of being born alive anyway. It may be noted that transferred malice does not apply to an unborn child. Thus, there needs to be a separate intention and act, see Archbold 17B-23 'Where a person attacks a pregnant woman intending to do her [GBH] and in consequence of that attack, she goes into premature labour with the child being born alive but subsequently dying as a result of being born prematurely, the doctrine of transferred malice has no application.' See also *A-G's Reference (No 3 of 1994)* [1998] AC 245.

[296] This consolidates the legislation referred to in the text, see **8**. However, this provision is not actually necessary if the effect is simply set out in a Table.

[297] See Police Act 1996, s 89.

[298] See Assaults on Emergency Workers (Offences) Act 2018.

[299] See Protection from Sex Based Harassment in Public Act 2023 *etc*.

[300] It may be that this category is no longer needed. Such matters could be dealt with as a matter of civil law, removing a considerable volume of criminal caselaw (actual and potential) from the criminal to the civil sphere.

[301] It is asserted that *Cunningham* (1982) got this wrong, through lack of review of legal history. Further if GBH is not so defined, there should be no elevation of the same to murder where a person dies as a result of GBH. Similarly, it is not the weapon, but the injury produced (cf. *Janjua* (1999)) which is important. See generally, Archbold (2024) 19-18.

(5) The basis for prosecution shall include the evidence in (4)(b).

19. Torture

(1) It is a crime if a person (A):

(a) being a public official

(b) when performing his official duty

(c) intentionally

(d) inflicts in (or outside) the UK

(e) severe [physical] pain (or [mental] suffering)

(f) on another person (B)

(2) *'public official'* includes when A acts in an official capacity, whatever A's nationality.

(3) '*Performing*' in (b) includes purportedly performing.

20. No Violent Injury

(1) Part 2 (child under 10 *etc*) shall apply to a violent injury.

21. Defences to Violent Injury

(1) Section 13 (*reasonable self defence*) applies to s 17.

(2) Section 14 (*bona fide medical treatment*) applies to s 17.

(3) For the avoidance of doubt, a person (A) may use:

(a) reasonable force in the circumstances

(b) against another person (B) in the case where (4) applies

(c) in order to restrain B (or to prevent B self harming) and

(d) it shall not be counted as violent jury under s 17.

(4) Where B is:

(a) a child under 16

(b) a VP

(c) intoxicated

(d) suicidal

(e) mentally unwell or where

(f) A is assisting a PO (or emergency worker) performing their lawful duty.

22. Consent

(1) A person shall be presumed to impliedly agree to:[302]

(a) a reasonable degree of physical injury

(b) in playing a contact sport (or game)

(c) which is lawfully played

(d) however (a) shall not include VSI or SI.

(2) Corporal punishment of a child under [16]:

(a) by a parent,

(b) shall not include VSI or SI.[303]

(3) Consensual sex acts shall not include VSI or SI.[304]

[302] Kenny (see n 34) in 1902 stated: 'ordinary fencing, and similarly boxing, wrestling, football and the like are lawful games if carried on with due care. Everyone who takes part in them gives, by so doing, his implied consent upon himself of a certain (though a limited amount) of bodily harm. *But no one has the to consent to the infliction upon himself of an excessive degree of bodily harm, such harm as amounts to 'maiming' him [ie GBH]; and thus his agreement to play a game under dangerously illegal rules will, if he be killed in the course of a game, afford no legal excuse to the killer*…Of course even the most lawful game will cease to be lawful as soon as anger is imported into it; and the immunity from criminal liability for those engaged in it will consequently at once disappear'. The words in italics would seem useful.

[303] See Children Act 1984, s 58.

(4) Consensual body mortification shall not include VSI or SI and the following shall be treated as:

(a) VSI on public policy grounds, the removal of an:

(i) eye, nose, limb or genitalia

(ii) other than for *bona fide* medical or gender re-assignment purposes.

(b) SI on public policy grounds:

(i) splitting of the tongue

(ii) removal of an ear or nipple [305]

(iii) tattooing of the face

(iv) branding of a person.[306]

23. Application

(1) Violent injury in s 17 may be:

(a) by act or omission[307]

(b) direct or indirect

(c) random

(d) by way of transferred malice.

24. Interpretation

'*emergency worker'* means [ ].[308]

'*noxious thing'* includes a poison or estupefacient or narcotic.

'*PO*' means a police officer (constable).

'*transferred malice'* shall bear the meaning in s 6.

'*violent injury'* includes:

(a) choaking, suffocating or strangling B[309]

(b) rendering B incapable, unconscious or incapable of resistance or

(c) administering (or causing to be administered) a noxious thing to B.

Part 6 - Illegal Detention

25. Unlawful Imprisonment [310]

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally (or recklessly)

(c) prevents the free movement of another person (B)

(d) from a particular place.

26. Kidnap [311]

(1) It is a crime if a person (A):

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[304] See Serious Crime Act s 75A. This makes it clear that strangling so as inflict violent injury is unlawful, whether intentional or reckless. See also Domestic Abuse Act 2021, s 71 (it refers to '*sexual gratification'*; this reference is not required since the issue is whether it is part of a sex act, not whether pleasure is derived from the same, it may not be).

[305] At present (i)-(iii) are a '*grey'* area. Thus, legislation should clarify this.

[306] Cf. *Wilson (A)* [1996] 2 Cr App R 241. See also Archbold (2024) ch 19-235.

[307] Archbold (2024) 17A-3 states that 'An omission would be insufficient for the *actus reus* of the offence of battery.' This, oft repeated, statement (including in Archbold) is incorrect, although it generally applies. For example, neglect (e.g. starving a person) is homicide if the same dies and homicide is simply an aggravated battery.

[308] See Assaults on Emergency Workers (Offences) Act 2018, s 2.

[309] These provisions replace OPA 1861, s 21 (*attempting to choke*), 22 (*using chloroform*) 23 (*administering poison*), 24 (*ibid*), which should not be separate crimes, being examples of GBH (VSI/SI). See also Serious Crime Act 2015 s 75A. Section 75B relates to jurisdiction and should be dealt with in s 67.

[310] See **15**. This is a common law crime, which will be abolished on its placing in legislation. '*False*' means '*unlawful'.*

[311] Ibid, see **15**.

(a) unlawfully

(b) takes away (or carries off) another person (B)

(c) using force (or the threat of the same)

(d) without B's consent.

27. Slavery, Servitude and Forced or Compulsory Labour [312]

(1) It is a crime if a person (A):

(a) holds another person (B)

(b) in slavery (or servitude) and

(c) the circumstances are such that

(d) A knows (or ought to know) this

or if A

(e) requires another person (B)

(f) to perform forced (or compulsory) labour

(g) and the circumstances are such that

(h) A knows (or ought to know) this.[313]

(2) In (1), references to holding B:

(a) in slavery (or servitude) or

(b) being required to perform forced (or compulsory) labour

(c) are to be construed in accordance with the HRC, art 4.[314]

(3) In determining whether B is:

(a) being held in slavery (or servitude) or

(b) required to perform forced (or compulsory) labour

(c) regard may be had to all the circumstances.[315]

for example, regard may be had to any of B's personal circumstances such as:

(i) B being a child

(ii) B's family relationships

(iii) any mental (or physical) illness which may make B more vulnerable than other persons

(iv) any work (or services) provided by B) including such:

(a) provided in circumstances

(b) which constitute exploitation within s 29 (4).[316]

(4) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute:

(a) holding B in slavery (or servitude) or

(b) requiring B to perform forced (or compulsory labour)

(c) does not preclude a determination B is being so held or required.[317]

28. Human Trafficking [318]

(1) It is a crime if a person (A):

(a) arranges (or facilitates)

(b) the travel of another person (B)

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[312] See Modern Slavery Act 2015.

[313] See s 1.

[314] Ibid, s 1(2).

[315] Ibid, (3). There should be merger of (3) and (4).

[316] Ibid, s 1 (4). These are the references in the Modern Slavery Act 2015 are to ss 3(3) to (6).

[317] Ibid, s 1(5).

[318] This consolidates s 2.

(c) with a view to B being exploited.

(2) It is irrelevant whether B consents to the travel (whether B is an adult or child).

(3) A may, in particular, arrange (or facilitate) B's travel by:

(a) recruiting B

(b) transporting (or transferring) B

(c) harbouring (or receiving) B or

(d) transferring (or exchanging) control over B.

(4) A arranges (or facilitates) B's travel with a view to B being exploited if:

(a) A intends to exploit B (in any part of the world) during (or after) travel or

(b) A knows (or ought to know) that A or another person (C)

(c) is likely to exploit B in any part of the world during (or after) the travel.

(5) A person who is a UK national commits a crime under this section regardless of where:

(a) the arranging (or facilitating) or

(b) the travel

(c) takes place.

(6) A person who is not a UK national commits a crime under this section regardless of whether:

(a) any part of the arranging (or facilitating) takes place in the UK or

(b) the travel consists of arrival in (or entry into, departure from, or travel within) the UK.

29. Exploitation [319]

(1) For the purposes of s [28] B is exploited only if:

(a) one (or more) the following sub-sections apply

(b) in relation to the person - *slavery, servitude and forced or compulsory labour.*

(2) B is the victim of behaviour which involves the commission of a crime

(a) under s [27] or

(b) under s [27] if it took place in England and Wales - *sexual exploitation*

(3) Something is done to (or in respect of) B which involves the commission of a crime:

(a) under s 1(1)(a) of the Protection of Children Act 1978 (*indecent photos of children*) or

(b) the [SOA] 2003, Part 1 (*sexual offences*) as has effect in England and Wales or

(c) which would involve the commission of such a crime if done in England and Wales - *removal of organs etc*

(4) B is encouraged (required or expected to do) anything which:

(a) involves the commission by B or another person (C), of a crime under the Human Tissue Act 2004 s 32 or 33 (*prohibition of commercial dealings in organs and restriction on use of live donors*) as it has effect in England and Wales or

(b) which would involve the commission of such a crime by B or (C) if it were done in England or Wales - *securing services etc. by force, threats or deception*

(5) B is subjected to force, threats or deception designed to induce B to:

(a) provide services of any kind or

(b) provide another person (C) with benefits of any kind or

(c) enable C to acquire benefits of any kind securing services *etc* from children and VPs.

(6) Another person uses (or attempts to use) B for a purpose within [s 28] having chosen B for that purpose on the grounds that:

(a) B is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person and

[319] This consolidates s 3, which is very muddled anyway and could be better stated.

(b) an adult, or a person without illness, disability, or family relationship, would be likely to refuse to be used for that purpose.

30. Committing Crime with Intent to Commit Crime under s [28] [320]

(1) A person (A) commits a crime under s [28]

(a) if A commits any crime

(b) intending to a crime under s [28] (*including a crime committed by aiding, abetting, counselling or procuring a crime under that section*).

31. Interpretation

(1) '*HRC*' means the Human Rights Convention contained in Appendix 1 to the Human Rights Act 1998.

(2) '*Travel*' means:

(a) arriving in (or entering) any country

(b) departing from any country

(c) travelling within any country.

Part 7 - Intimidation

32. Threat to Kill [321]

(1) It is a crime if a person (A):

(a) unlawfully

(b) threatens to kill another person (B) or a third person (C)

(c) A intending B to fear that

(d) A will kill B (or C)

33. Harassment

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally

(c) harasses another person (B).

(2) Appendix [] applies.[322]

34. Stalking [323]

(1) It is a crime if a person (A):

(a) unlawfully *and*

(b) intentionally

(c) stalks another person (B).

(2) A's conduct comprises stalking in (1)(c) if:

(a) it amounts to harassment of B

(b) the acts (or omissions) of A are ones associated with stalking such as those in (3) and

(c) A knows (or ought to know) his conduct amounts to harassment.

[320] This consolidates s 4.

[321] This consolidates the OPA 1861, s 16.

[322] This should set out material in the Protection from Harassment Act 1997. However, this Act is dated and much has been superceded. For example, s 1 is not required if consolidated. It is, also, too wide, since the root of all harassment from long ago has always been found on a threatening in some form (menaces, in the Anglo-Norman). Further, the 1997 Act, s 2B should be aligned with the PACE 1984 and ss 3 and 4 should be in an Appendix. The 1997 Act, s 4 is not required if '*harass*' is correctly formulated and ss 4B, 5, 7, 12 should be in an Appendix. The Criminal Justice and Police Act 2001 s 42 should be incorporated into a restraining order (RO) and s 42A is not required if '*harass'* is correctly formulated. The Malicious Communications Act 1998 should be part of '*harass*'. So too, the Sentencing Act 2020, ss 359-64 (*restraining order*).

[323] See Protection from Harassment Act 1997 s 2A and Stalking Protection Act 2023. It may be noted that the Criminal Justice and Police Act 2001, s 42A (*offence of harassment of a person in his home*) is, basically, stalking and covered by s (3)(e). If not, it should be expanded slightly to cover it, to prevent duplication.

(3) The following are examples of acts (or omissions) which, in particular circumstances, are ones associated with stalking:

(a) following B

(b) contacting (or attempting to contact) B by any means

(c) publishing any statement or other material:

(i) relating (or purporting to relate) to B or

(ii) purporting to originate from B

(d) monitoring the use by B of the internet, email or any other form of electronic communication

(e) loitering in any public or private place [waiting for B]

(f) interfering with any property [real or personal][324] in the possession of [B]

(g) watching (or spying) on B.

(4) Appendix [] applies (*stalking prevention orders*).[325]

(5) It is a crime if a person (A):[326]

(a) without reasonable excuse

(b) breaches a SPO (or interim SPO).

35. <u>Controlling or Coercive Behaviour</u> [327]

(1) It is a crime if a person (A):

(a) repeatedly (or continuously) engages in

(b) controlling or coercive behaviour

(c) towards another person (B)

(d) with whom A is personally connected

and

(e) the behaviour has a serious effect on B

(f) which A knows (or ought to know).

(2) '*serious effect'* means A's behaviour causes:

(a) B to fear on, at least, 2 occasions, that

(b) violence will be used against him or

(c) it causes B serious alarm or distress which

(d) has a substantial effect on B's usual day-to-day activities.

'*ought to know*' means that which:

(a) a reasonable person

(b) in possession of the same information

(c) would know.

'*personally connected*' A and B are such if they:

(a) are (or have been) married (or civil partners) to each other

(b) have agreed to marry or (enter into a civil partnership) with each other (whether or not the agreement has been terminated)

(c) are (or have been) in an IPR with each other

(d) have (or each have had) a parental relationship in relation to the same child

(e) are relatives.

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[324] Ibid.

[325] See also Criminal Justice and Police Act 2001, s 42 (*police directions stopping the harassment of a person in his home*). This should be covered by a SPO.

[326] Ibid, s 8.

[327] See Serious Crime Act 2015, s 76. I have clarified and simplified some of the wording.

'*civil partnership agreement*' has the meaning in the Civil Partnership Act 2004, s 73.

'*child'* means a person under 18.

'*IPR*' means intimate personal relationship.

'*parental responsibility*' has the meaning in the Children Act 1989.

'*relative*' has the meaning in the Family Law Act 1996, s 63(1).

(3) A does not commit a crime under (1) if, at the time of the behaviour in question:

(a) A has responsibility for B for the purposes of the [Children and Young Persons Act 1933, s 17] and

(b) B is under 16.

(4) ***Defence***. It is a defence for A to show that:

(a) in engaging in the behaviour in question

(b) A believed he was acting in B's best interests and

(c) the behaviour was, in all the circumstances, reasonable.

(5) A is to be taken to have shown the facts mentioned in (4) if:

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them and

(b) the contrary is not proved beyond reasonable doubt.

(6) The defence in (4) is not available to A in relation to:

(a) behaviour that causes B to fear

(b) violence will be used against him.

(7) For the purposes of (2), A "*ought to know*" that which a reasonable person in possession of the same information would know.

36. Interpretation

(1) '*Harass*' includes the following conduct by A, to:

(a) threaten physical (or mental) harm to B (or his family)

(b) threaten to cause criminal damage to B's (or his family's) property (real or personal)

(c) send a non-consensual communication or article to B (or his family) containing:

(i) grossly indecent or obscene language designed to intimidate, humiliate or distress[328]

(ii) *threatening, abusive or insulting language designed causing alarm or distress*[329]

(iii) racial, religious or sex orientation slurs.[330]

(d) display any public sign (or writing or other visible representation in a public place) containing (c).[331]

(2) Where (1) comprises the unlawful harassment by A of a debtor (B), '*harass*' also includes any:[332]

(a) false claim for the debt;

(b) false claim for unwarranted interest, costs or additional charges of any kind;

(c) false representation that criminal proceedings lie for non-payment;

(d) false representation that A (or his agent) is authorised in some official capacity to claim (or enforce) payment of the debt;

(e) [communication] falsely represented by A (or his agent) to have (or purporting to have) some official character.

but it does not include anything done by A which is reasonable (and otherwise permissible) for the purpose of:

[328] See Malicious Communications Act 1998, s 31. The Administration of Justice Act 1970, s 40 '*alarm, distress or humiliation'*. The Public Order Act 1986, s 4A refers to '*harassment, alarm or distress*', s 5 refers to '*intentional harassment, alarm or distress*' on account of sex. The Malicious Communications Act 1988 refers to '*distress or anxiety*'.

[329] See Public Order Act 1986, s 4A. However, this wording seems too wide. It also repeats s 5.

[330] See Ibid, s 4B and Crime and Disorder Act 1998, s 31. It refers to an article or communication of an '*indecent or grossly offensive nature'*. The Crime and Disorder Act 1998 refers to harassment when racially or religiously aggravated.

[331] Ibid, s 4A.

[332] This consolidates the Administration of Justice Act 1970, s 40.

(i) securing the discharge of an obligation due (or believed by A to be due) to A (or a person for whom he acts (C))

(ii) protecting A or C from future loss

(iii) the enforcement of any liability by legal process

(iv) where want is done is a commercial practice within the meaning of the Consumer Protection from Unfair Trading Regulations 2008 and B is a consumer in relation to that practice.[333]

(3) '*SPO*' means a stalking protection order.

Part 8 - Unlawful Abortion[334]

37. Unlawful Abortion

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intending to kill an unborn child (B)

(c) does an act causing B's death

(d) before B has an independent existence from its mother.[335]

(2) It is a defence to (1) if A:

(a) in good faith

(b) does an act causing B's death

(c) for the purpose of the lawful medical termination of pregnancy[336]

(d) at a regulated clinic, heath care facility or hospital.[337]

(3) Appendix [ ] applies.[338]

38. Assisting Unlawful Abortion

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally

(c) supplies (or provides)

(d) any noxious thing, instrument or other means

(e) knowing it is intended to produce an unlawful abortion

(f) whether (or not) the mother is with child.[339]

39. Interference with Abortion Services (AS)

(1) It is a crime if a person (A):

(a) does an act within a SAZ

(b) A intending (or reckless whether)

(c) it has the effect of:

(i) influencing any person's (B's) decision to access (provide or facilitate the provision of) AS at a regulated clinic

(ii) obstructing (or impeding) B's accessing (or providing or facilitating the provision of) AS at a regulated clinic or

[333] Ibid, s 40 (3) & 3(A).

[334] This combines the Infant Life (Preservation) Act 1929 (*child destruction*), OPA 1861, s 58 (*administering drugs to procure abortion*), s 59 (*procuring drugs etc to procure abortion*) and the Abortion Act 1967 (*lawful termination of pregnancy*). Also, the Public Order Crimes Act 2023, s 9 (*interference at abortion clinic*).

[335] 1929 Act, s 1.

[336] 1967 Act, s 1 (this effectively cancels wording in the 1929 Act *re* lawful termination to preserve mother's life).

[337] This will consolidate the references in the Acts in n 334.

[338] This puts in an Appendix, the Abortion Act 1967, ss 1-5, where relevant.

[339] This consolidates OPA 1861, s 59.

(iii) causing harassment, alarm or distress to B in connection with:

(a) B's decision to access (or provide or facilitate the provision of) AS

(b) at a regulated clinic where B is within the SAZ.

(2) No crime is committed under (1) if A:

(a) is inside a dwelling (or a building or site used as a place of worship) and

(b) B is, also, in the same (or another).

(3) Nothing in this [s] applies to anything done in the course of:

(a) providing (or facilitating the provision of) AS in a regulated clinic or

(b) providing medical care within a regulated healthcare facility or

(c) any person(s) accompanying B with B's consent or

(d) the operation of a camera if its coverage of persons accessing (or attempting to access) a regulated clinic is incidental.

40. <u>Interpretation</u>

(1) '*act*' includes where A (being the mother) or another person (C):

(a) intending to produce an abortion [340]

(b) takes any noxious thing (or C administers it to her) or

(c) uses any instrument (or C does on her) or

(d) employs any other means

(e) to achieve (a).

(2) '*an independent existence from its mother.'* An unborn child does not have such if:

(a) still in its mother's womb or

(b) it cannot live without connection to its mother (excluding an umbilical cord) and a court may require (or the prosecution or defence may supply to the court) a report from a qualified medical expert certifying whether B was unborn.[341]

(3) '*AS*' means abortion services provided for the termination of pregnancy.

(4) '*dwelling*' has the same meaning as in [s] of this Act (*offence of locking on*).[342]

(5) '*lawful medical termination'* means [].[343]

(6) '*noxious thing*' has the same meaning as in s 6.

(7) '*SAZ*' means a safe access zone, being an area within a boundary which is 150 metres from any part of a clinic (or any access point to any building or site that contains a clinic) and which is:

(a) on (or adjacent to) a public highway (or public right of way)

(b) in an open space to which the public has access

(c) within the curtilage of a clinic (or building or site which contains a clinic) or

(d) in any location visible from a public highway (or public right of way, or open space to which the public have access, or the curtilage of) a clinic.

(8) '*unborn child'* means a child (including a foetus when more than one) capable of being born alive and:

(a) evidence that a woman

(b) at any material time

(c) had been pregnant for [28] weeks (or more)

(d) is *prim â facie* proof she was

(e) at that time

[340] This consolidates OPA 1861, s 58. '*Abortion*' is the more modern word.

[341] This is a new definition to obviate the need to refer to very antiquated caselaw, when medical science (and terminology) has developed very greatly since Victorian times. It should be appropriate for a medical expert to certify whether a child is unborn or not.

[342] This refers to the Public Order Act 2023.

[343] Insert wording from Abortion Act 1967, s 1(1) and s 5(1). The latter Act refers to 24 weeks, it should be noted.

(f) pregnant of a child capable of being born alive.[344]

Part 9 - Crimes against Children

41. Concealing Child's Birth

(1) It is a crime if a person (A):

(a) in the case where a woman delivers a dead child (B)

(b) secretly disposes of B's body

(c) in an attempt to conceal B's birth.

(2) Whether B died before (or at or after) B's birth is irrelevant to (1). [345]

(3) That A concealed B prior to B's death does not affect (1)(b) if it and (1)(c) applies after B's death.[346]

(4) Secret disposition in (1)(b) shall be a matter of fact.[347]

(5) Identification of B's mother is irrelevant to the commission of a crime in (1).[348]

[]. Infanticide

[Child Exposure [349]

(1) It is a crime if a person (A):

(a) unlawfully and

(b) intentionally

(c) abandons or exposes

(d) a child under the age of [2] (B)

(e) whereby B's life is endangered

(f) or B's health is (or is likely to be) permanently injured.]

[42. Exposing Child to Burning

(1) It is a crime if a person (A) over 16:

(a) having responsibility for a child under 12 (B)

(b) allows B to be in a room containing an open fire grate (or a heating appliance)

(i) one liable to cause injury to a person by contact therewith

(ii) one insufficiently protected to guard against the risk of B being burnt (or scalded)

(c) if A fails to take reasonable precautions against such risk and

(d) B is killed (or suffers SI or VSI) as a result.[350] *]*

[***43. Child Cruelty***

(1) It is a crime if a person (A) over 16:

(a) having responsibility for a child under that age (B)

(b) intentionally

(i) assaults or

(ii) ill-treats (physically or otherwise) or

(iii) neglects or

(iv) abandons or

(v) exposes B or

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[344] This consolidates the 1929 Act s 1 (2) and the Abortion Act 1967.

[345] This consolidates OPA 1861, s 60.

[346] See Archbold 19-202 and *Coxhead* (1845). Surely, this must be right.

[347] Ibid.

[348] Ibid, 201.

[349] This crime is an example of child cruelty (see, s 24) and should be merged into it. Indeed, it uses the same words ('*abandons*', '*exposes*'). Thus, this crime is unnecessary by reason of duplication. In any case (e) and (f) would not seem relevant.

[350] Ibid, CYPA 1933, s 11. This would be better treated as manslaughter (recklessness) or VSI, as opposed to a distinct crime. In any case (b)(i) would seem to be otiose, being covered by (ii). It should be noted that s 11 refers to '*serious injury'*. I have changed this to refer to SI and VSI.

(c) causes or procures[351] *such*

(d) in a manner likely to cause B unnecessary suffering (or injury to health)

(e) whether physically or psychologically.[352]

[44. Giving Child Alcohol [353]

(1) It is a crime if a person (A):

(a) gives (or causes to be given) alcohol

(b) to a child under [5]

(c) except on the order of a duly qualified medical practitioner or

(d) in case of sickness, apprehended sickness, or other urgent cause. [354]

[45. Selling Child Tobacco

(1) It is a crime if a person (A):

(a) sells to a child under 18 (B)

(b) any tobacco (or cigarette papers)

(c) whether for B's use or not.[355]

(2) Appendix [] applies].[356]

46. Selling Child Aerosol Paint

(1) It is a crime if a person (A):

(a) sells to a child under 16

(b) an aerosol paint container.[357]

47. Child Begging

(1) It is a crime if a person (A):

(a) having responsibility for a child under 16 (B)

(b) causes (or allows) B to be in a public place

(c) for the purpose of begging.[358]

(2) It is a crime if a person (A):

(a) has with him in a public place

(b) a child under 16 (B)

(c) who is begging

(d) whether 1(a) applies or not.[359]

48. Child Performances

(1) It is a crime if a person (A):

(a) requires a child [under16](B)

(b) to take part in a performance

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[351] The word '*causes*' would seem superfluous. The word '*procures*' here means '*brings about'* (including incitement).

[352] This crime should be inserted into homicide in the case of the non-accidental death of a child or vulnerable person (see also Domestic Violence, Crime and Victims Act 2004, s 5). In any case (d) and (e) would seem superfluous since this is implicit within the sub-crimes of exposure *etc*. In other words, it should not have to be additionally proved. As for the CYPA 1933, s 1 (2)-2(B) (smothering in bed), this can be added in if required (ss (3) seems otiose).

[353] Ibid, s 5. This should be inserted in the Licensing Act 2003.

[354] Surely, this age limit should be increased (i.e. before 14/15). Also, the exception would no longer seem relevant, since alcohol is no longer prescribed as a medication, unlike in Victorian times.

[355] This consolidates the CYPA 1933, s 7. This should be in an Act which deals with tobacco, vaping *etc*.

[356] All of ss 7 & 12A-D, should be in an Appendix in any case.

[357] See Anti-Social Behaviour Act 2003, s 54.

[358] This consolidates the CYPA 1933, s 4. The wording is modernized.

[359] See CYPA 1933, s 4 (3). This I have modernized since the issue of whether the child '*has been lent or hired out'* in the 1933 Act is too restricted (A may be another family member in respect of whom A does not have legal responsibility).

(c) contrary to Appendix [ ].[360]

49. Child Safety at Entertainments

(1) It is a crime if a person (A):

(a) fails to take reasonable steps

(b) for the safety of a child under 16 (B)

(c) according to Appendix [].[361]

50. Child Employment

(1) It is a crime if a person (A):

(a) requires a child (B)

(b) to work beyond

(c) the maximum permitted employment hours (or otherwise as permitted)

(d) according to Appendix [].[362]

51. Child Tattooing

(1) It is a crime if a person (A):

(a) tattoos a person under 18 (B)

(b) unless such is performed for medical reasons

(c) by a duly qualified medical practitioner (or a person under his direction).

(2) No crime is committed under (1) if A can prove, when the tattoo was given, that:

(a) A had reasonable cause to believe B

(b) was over 18 and did, in fact, so believe.[363]

(3) "*tattoo*" means the insertion into the skin of any colouring material designed to leave a permanent mark

52. Female Genital Mutilation (FGM)

(1) It is a crime if a person (A):

(a) performs FGM on a girl under 16 (B) or

(b) A [assists or encourages] B to perform FGM on herself or [364]

(c) A is responsible for B at the time of (a).[365]

(2) ***Defence.*** No crime is committed under (1) if an approved person performed a surgical operation which was:

(a) necessary for B's physical (or mental) health or

(b) when B was in any stage of labour (or has just given birth) for any purpose connected therewith.

(3) ***FGM Outside UK***. If FGM is performed outside the UK, A is liable under (1):

(a) if (1)(a) is performed by a person (C) who is not a UK national (or UK resident)

(b) A assists (or encourages) C pursuant to (1)(b) and

(c) no defence under (2) applies to C.

(3) ***Custom or Ritual***. In determining whether (2)(a) (*mental health*) applies it is immaterial:

(a) whether B (or another person) believes

(b) the operation is required as a matter of custom or ritual.

(4) ***Anonymity etc***. Appendix [] applies to this section.[366]

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[360] This should be covered by employment legislation and not in a Crimes against the Person Act.

[361] This consolidates CYPA Act, s 12. All explanation should be in an Appendix (including CYPA 1963, s 37, 39-42).

[362] CYPA 1933, s 18. This should be in employment legislation and all explanation should be in an Appendix, see CYPA 1933, ss 18, 20-30, 107.

[363] This consolidates the Tattooing of Minors Act 1969.

[364] This consolidates the FGM Act 2003, ss 1 and 2 which should be combined. The older words *'aid, abet, counsel, procure'* should be modernized. It should be noted that this Act could be greatly simplified by using acronyms, combining text and putting administrative material in an Appendix.

[365] This consolidates s 3A which also should be combined.

(5) ***Interpretation***.[367]

'*approved person*' means []368

'*FGM'* means the:

(a) excision, infibulation or otherwise mutilation of the whole (or part) of

(b) a girl's genitalia.

'*responsible*' means []369

53. Surrogacy Arrangement (SA) [370]

(1) It is a crime if a person (A) on a commercial basis, in the UK:

(a) initiates any negotiations (or takes part in the same) with a view to the making of a SA **or**

(b) offers (or agrees to negotiate) the making of a SA or

(c) compiles any information with a view to its use in making (or negotiating the making) of a SA and

(d) *no person shall, in the UK, intentionally* [371] *cause another (C) to do (a).*

(2) Appendix [] shall apply to this section.[372]

(3) No SA is enforceable by (or against) any of the persons making it.[373]

54. Surrogacy Advert [374]

(1) It is a crime if a person (A):

(a) publishes a surrogacy advert

(b) in a newspaper (or periodical) in the UK.

(2) The editor or publisher of the newspaper (or periodical) in (1) shall be treated as A. [375]

(3) Where a surrogacy advert is conveyed by means of:

(a) an electronic communications network ('**ECN**')

(b) so as to be seen or heard (or both) in the UK

(c) any person in the UK who causes it to be so conveyed

(d) knowing it contains a surrogacy advert

(e) shall be treated as A in (1).

(4) Save where (3) applies, a person who publishes (or causes to be published) in the UK:

(a) a surrogacy advert

(b) shall be treated as A in (1).

(5) Save where (3) applied, a person who distributes (or causes to be distributed) in the UK:

(a) a surrogacy advert

(b) shall be treated as A in (1)

(6) Appendix [ ] shall apply to this section.[376]

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[366] This deals with anonymity (which should also be combined with other criminal legislation relating to anonymity) and FGM protection orders (see FGM, sch 1 &2).

[367] I have not set out all here since some can go to the Appendix.

[368] See FGM Act 2003, s 1. '*Approved person'* should include 1(3) & (4).

[369] See s 3A.

[370] This consolidates the Surrogacy Arrangement Act 1985. The title heading in the Act, s 2, says '*surrogacy negotiations'*. However, a title '*surrogacy arrangement'* would seem better.

[371] '*Intentionally*' is better than '*knowingly*'. However, this provision appears to impose no punishment.

[372] See Surrogacy Arrangement Act 1985, s 2 (defences).

[373] Ibid s 1.

[374] See s 3.

[375] Ibid, s (2).

[376] This refers to defences.

55. Child Abduction by Parent [377]

(1) It is a crime if a person (A):

(a) who is connected with a child under 16 (B)

(b) takes (or sends) B out of the UK without

(c) the appropriate consent of another person (C).

(2) ***Defence - Out of UK***. No crime under (1)(b) is committed if:

`

(a) A is named in a CAO as the person with whom B is to live and

(b) he takes (or sends) B out of the UK for a period of less than 1 month

or

(c) A is a special guardian of B and

(d) he takes (or sends) B out of the UK for a period of less than 3 months.

but this defence does not apply if A takes (or sends) B out of the UK in breach of an order under the Children Act 1989, Part II.[378]

(3) ***Defence - Consent***. No crime under (1)(c) is committed if:

(a) A does it in the belief C has consented

(b) C would consent, if aware of all the relevant circumstances

(c) A has taken all reasonable steps to communicate with C but has been unable to do so or

(d) C has unreasonably refused to consent.

but this defence does not apply if C is:

(a) named in a CAO as a person with whom B is to live

(b) C is a special guardian of B

(c) C has custody of B or

(d) A who has taken (or sent) B out of the UK is by so acting, in breach of a UK court order. [379]

(4) Where, in proceedings for a crime under this section:

(a) there is sufficent evidence to raise an issue as to the application of (3)

(b) it is for the prosecution to prove (3) does not apply.[380]

(5) This section shall have effect subject to the provisions of Appendix [] if B is:

(a) in the care of a local authority or

(b) detained in a place of safety or

(c) remanded otherwise than on bail or

(d) the subject of proceedings (or an order) relating to adoption.[381]

56. Child Abduction by Third Party [382]

(1) It is a crime if a person (A):

(a) unlawfully *or without reasonable excuse*[383]

(b) takes (or detains) a child under 16 (B)

(c) in order to remove B

(d) from the lawful control[384] of a person (C)

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[377] See Child Abduction Act 1984 and Child Abduction and Custody Act 1985.

[378] This adds in the CAA 1984, s 1(4) & 4(A).

[379] Ibid, s 5 & 5(A).

[380] Ibid, s 6.

[381] See s 1(8).

[382] See Child Abduction Act 1984, s 2 and Child Abduction and Custody Act 1985.

[383] In modern drafting '*unlawfully*' usually includes '*without reasonable excuse [defence]*.'

[384] This should be a defined term.

(e) who has (or is entitled to) such lawful control.

57. Interpretation

'*aerosol paint container'* means a device containing paint stored under pressure which is designed to permit the release of the paint as a spray.

'appropriate consent' means [].[385]

'*begging*' includes where B:

(a) solicits (or receives) alms

(b) whether or not there is any pretence of

(c) singing, playing, performing, offering anything for sale, or otherwise.

'*connected with a child'* means [ ].[386]

'*CAO*' means a child arrangements order.

'*lawful control'* means [ ].[387]

'*SA*' means a surrogacy arrangement.[388]

'*surrogacy advert*' means [ ].[389]

Part 11 - Incohate Crimes

58. Attempt. The crime of attempt shall apply to Parts 1-6.

59. **Conspiracy**. The crime of conspiracy shall apply to Parts 1-6. In particular, the following shall apply:

(1) It is a crime if a person (A):

(a) conspires with

(b) another person (B)

(c) to murder a third person (C)

(d) pursuant to s 1.[390]

(2) In the case of (1), A shall be treated as a principal.[391]

60. Incitement. The crime of incitement shall apply to Parts 1-6. In particular, the following shall apply:

(1) It is a crime if a person (A):

(a) incites[392]

(b) another person (B)

(c) to murder a third person (C)

(d) pursuant to s 1.

(2) In the case of (1), A shall be treated as a principal.[393]

(3) '*incites*' means that A [orders],[394] encourages, persuades, invites [*or solicits*] C.

[ ]. The crime of procurement shall apply to Parts 1-6.[395]

[385] This will add in the Child Abduction Act 1984, s 1(3).

[386] Ibid, s 1(2).

[387] See CAA 1984, s 2. This should be a defined term.

[388] Other definitions in the Surrogacy Arrangement Act 1985 can be contained in an Appendix.

[389] Ibid.

[390] This is the effect of the OPA 1861, s 4 since it uses an old word for conspiring *('propose'*). The other words used are covered by the term '*inciting*'.

[391] This is the effect, since it seems clear that the intention of the OPA 1861, s 4 was to make this a substantive crime (otherwise, attempt, conspiracy and incitement are inchoate). Further, a threat to kill is a substantive crime in itself, although inchoate.

[392] This is the effect of the OPA 1861, s 4 which refers to '*solicit*' as well as synonyms '*encourage, persuade, or endeavour to persuade'*. As previously noted, the word '*solicit*' should be dropped.

[393] See n 391.

[394] This word should be included since '*incitement*' should cover, for example, where a mafia boss orders a subordinate to murder someone.

[395] As noted in the text, see **10**, this word should be dropped, being so uncertain in its core content today.

Part 12 - Criminal Procedure

61. Indictment for Murder

(1) On an indictment for murder pursuant to s 1, a person found not guilty of murder (A) may be found guilty of:

(a) manslaughter or

(b) causing [GBH] (VSI) with intent to do so or

(c) any crime of which A was found guilty under an enactment specifically so providing or

(d) under [s 4(2)] or

(e) an attempt to commit murder or any other crime of which A might be found guilty.

but A may not be found guilty of any crime not included above.[396]

62. Self-Intoxication

(1) If a person (A) is accused of a crime under Parts 1 or 2 [*a crime*] [397] and:

(a) A's act occurred

(b) when A was self-intoxicated

(c) if it cannot be proved by the prosecution that A acted intentionally

(d) A shall be presumed by law to have acted recklessly

(e) if the self-intoxication is a substantial cause of A's act.

(2) The burden of proof to disprove (1)(c)-(d) lies on the defence.

(3) The prosecution (or defence) may submit evidence to prove (or disprove) self-intoxication, including medical evidence.

(4) '*self-intoxication'* means A was under the influence of:

(a) non-medicinal drugs or

(b) a deliberate overdose of medicinal drugs [398] or

(c) alcohol [399]

(d) such that A lacked sufficient mental capacity to form a distinct intention.

(5) '*self*' means that A took (4)(a) voluntarily and not under duress.[400]

(6) Where A's self-intoxication was to:

(a) give A courage to carry out his intent or

(b) deceive others in thinking there was an absence of intent,

self-intoxication shall be treated as irrelevant to the issue whether there was intent.[401]

63. Joint Venture (JV) - Principal

(1) A JV is where more than one principal (or an accessory) is involved in a crime (either, C).

(2) For C to be a principal:

(a) C must satisfy the same legal pre-requisites for the crime as A. For example, for the purposes of s 1 or s 2, if B is killed by the act of both A and another person (C):

(a) C shall be treated as a principal only if both

(b) s 1 (a) and (b) (*for murder*) or s 2 (a)-b) (*for manslaughter*) (as appropriate) and

(c) s 5 (2) (*substantial cause*)

(d) independently apply to C.[402]

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[396] Criminal Law Act 1967, s 6(2). It would be useful to insert it here. See, also, Archbold (2024) 4-528.

[397] One would suggest that this apply to all (or most) crimes. If the criminal law is consolidated this would be very easy.

[398] This, obviously, would be reckless and - if done pursuant to (6) – should be treated as irrelevant. For example, a clever murderer deliberately taking drugs or alcohol (including prescription drugs) to hide his intention.

[399] See Archbold (2024) 17B-56.

[400] Ibid, 17B-63 and *Field* (2021).

[401] See *A-G for NI v Gallagher* (1963) (*dutch courage*) and Archbold (2024) 17B-111.

[402] The words '*common purpose'* should be avoided and '*common intent'* used, since they are synonyms. However, the latter is more clear since, to be a principal, C must also (independently) *intend* to kill. Further, '*common*' means '*joint*' here (they are synonyms). Knowledge of a weapon

(b) If (a) does not apply, C shall be treated as an accessory pursuant to s 64 if appropriate.

64. JV - Accessory

(1) It is a crime if a person (A):

(a) does an act capable of encouraging (or assisting) the commission of a crime by another (B)[403] and

(b) A intends to encourage (or assist) its commission

(c) however, A is not be taken to have intended (b)

(d) merely because such encouragement (or assistance) was a forseeable consequence of A's act.[404]

(2) For the purpose of (1)(b), A can have a:

(a) general intent to assist (or encourage) B to commit a crime

(b) without having an intent to assist (or encourage) B to commit a specific crime

and

(c) in the case of the crimes listed in (3) which may involve

(d) many crimes committed over time with different actors (principals and accessories)

(e) A shall be treated as having such general intent in (a) unless the defence can prove otherwise.[405]

(3) The crimes of:

(a) terrorism

(b) drug trafficking

(c) money laundering

(d) gang related activity, including homicide and VSI

(e) sex crimes involving slavery, human trafficking, exploitation or prostitution

(f) arms dealing and weapons trafficking (gun running)

(g) money frauds (including internet frauds)

(h) homicide involving professional killings (hit men)

(i) crimes involving blackmail, kidnap.[406]

(4) For the purpose of 2(b) it is not necessary that:

(a) A knows the precise means (or method of operation) that will be employed by B to effect the crime(s)

(b) A knows whether a weapon (or particular weapon) will be used or when or how

(c) A's input be a '*substantial cause'* in B's crime (or crime). However, it must be contributory in more than a minor measure.[407]

(5) The following older terms should not be used and replaced in criminal legislation with the following:

Older Term	Modern Term

---

or '*the*' weapon which produced the death is, also, irrelevant. To be a principal, C's act must, also, have been a substantial cause to B's death. Otherwise, C should not be a principal. As with A, the only thing that can change this is when C's *intent* and C's act being a *substantial cause* is overridden by a NAI - such as a new actor (D) stepping in (without collusion) and with an intent to kill suddenly doing something which produces a new substantial cause (overriding that of A and C). For example, A and C are beating B producing GBH and (suddenly) D steps forward from nowhere (without any collusion of A and C) and shoots B dead. Further, the reasoning in *Jogee* (2017) is too complex.

[403] This wording should be improved (further clarified). It should be a crime if A: (a) assists (i.e. helps) B to commit a crime; (b) incites B to commit a crime; or (c) provides the means for (the old word *procures*) for B to commit a crime. When a person orders (commands) another to commit a crime, that person must be the principal and this should be made clear.

[404] Serious Crime Act 2007, s 44. See also Archbold (2024) 17B-67. Archbold notes 'Parliament has provided that foresight is not sufficient *mens rea* for the offence of encouraging or assisting another person to commit an offence. Foresight is no more than evidence of intent'. One would agree which is why, in the criminal field, such should not be '*read in'* - or required - for any crime involving intent or recklessness. It is not necessary. These words are of fact and should be treated as such (so too an accident/negligence).

[405] This is my wording to cover a gap in the Serious Crime Act 2007.

[406] Ibid. These activities all involve gangs in which the gang members assist in various crimes and alternate (sometimes, being the principal, sometimes the accessory) with the crimes themselves changing (as the gang exploits new fields of criminal activity, moves to more profitable activities *etc*, like any sophisticated business). Here, I merely list the crimes, not specific legislation, given that I argue for all the same to be consolidated.

[407] If it were, A would likely be a principal, not accessory. See also Archbold (2024) 18B-70. This wording summarises current caselaw.

'aid'	'*assist*' (to include 'help')
'abet'	'*assist*'
'counsel'('solicit')	'incite' [408]

(6) '*assist'* shall include '*helping*' and shall include where A *inter alia*:

(a) provides:

(i) financial assistance or

(ii) weapons or

(iii) transport or

(iv) logistics

(v) to enable B to commit a crime(s);

(b) facilitates the commission of a crime(s) by B;

(c) helps remove evidence of a crime(s) by B;

(d) traffics material (including drugs, weapons, money) or persons[409] to enable B to commit a crime(s).

(7) '*encourages*' shall include where A *inter alia:*

(a) provides:

(i) data or

(ii) directions or

(iii) plans or

(iv) technical support,

(v) to enable B to commit a crime (s).

(b) urges on B to commit a crime(s)

(c) gives advice (including legal and accounting advice) to enable B to commit a crime(s).

65. JV - Withdrawl as Principal

(1) A (or C) shall only be treated as having withdrawn from a JV in s 63 and, thus, not be held to be a principal:

(a) if s 64(1) or (2) no longer applies to A (or C) [410] and

(b) A (or C):

(i) demonstrably evidences this in some fashion[411]

(ii) to show the end of his participation in the JV.

(2) Whether withdrawl has occurred is a matter of fact. However, the fact that:

(a) the JV goes beyond what A (or C) agreed to (or envisaged)

(b) does not constitute withdrawl if (1) does not apply.

(3) Withdrawl as a principal may result in A (or C) still being held to be an accessory.

66. JV - Withdrawl as Accessory

(1) A (or C) shall only be treated as having withdrawn from a JV in s 64 and, thus, not be held to be an accessory:

(a) if A (or C) no longer encourages (or assists) pursuant to s 64 and

(b) section 65 (1)(b) applies.

(2) Section 65(2) shall apply.

[408] This reflects my opinion expressed in the text that the Accessories and Abettors Act 1861 terminology is wholly out of date.

[409] Such as in the case of prostitution or people smuggling.

[410] This my wording to clarify the meaning of '*assist*', to enable old synonyms and expressions to be removed.

[411] One would agree with *Whitehouse* (1941) and other cases cited by Archbold (2024) there must be manifest evidence of abandonment/counter manding/dis-association/effective dis-engagement (all meaning the same as withdrawl (of participation)). This should be a matter of fact.

67. Jurisdiction [][412]

68. Interpretation

'*accessory*' means a secondary (more minor) party in the commission of a crime.

'*principal*' means the (or a, when more than one) primary party in the commission of a crime.

69. Consent to Prosecution by DPP or AG [413]

Part 13 - General

70. Form of Charge and Table of Sentences

(1) The form of charge in the case of any section in this Act shall be:

'*The accused is hereby charged with [ ] under s [ ] of the Crimes against the Person Act'.*

(2) The sentence for any crime in this Act is set out in Table A.

71. Minor and Consequential Amendments

(1) Amendment to various Acts shall be as set out in Appendix 5.

72. Repeals

(1) The legislation in Appendix [], part 1 is hereby repealed.[414]

73. Abolition of Obsolete Common Law Crimes [415]

(1) The common law crimes in Appendix [], part 2 are hereby abolished.

Appendix 3

Note: This Appendix sets out the present legislation on Crimes against the Person. Sentences *are underlined* since they should be placed in a Table at the back of a new Crimes *against the Person Act*. I have also used acronyms to shorten the text. They should, also, be used in a new Crimes against the Person Act.

Offences against the Person Act 1861

S 4. **Conspiring or soliciting to commit murder.** Whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of [HM] or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanor, [*obs*] and being convicted thereof shall be liable to imprisonment for life.[416]

S 5. **Manslaughter.** Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the court, to be kept in penal servitude [*obs*] for life.

S 9**. Murder or manslaughter abroad.** Where any murder or manslaughter shall be committed on land out of the [UK], whether within the Queen's dominions or without, and whether the person killed were a subject of [HM] or not, every offence committed by any subject of [HM] in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, inquired of, tried, determined, and punished in England or Ireland: provided, that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act.

S 10. **Provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland.** Where any person being criminally stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or, being criminally stricken, poisoned, or otherwise hurt in any place in England or Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, inquired of, tried, determined, and punished in England or Ireland.

S 16**. Threats to kill.** A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding [10] years.

S 17. ***Impeding a person endeavouring to save himself from shipwreck.*** *Whosoever shall unlawfully and maliciously [intentionally] prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such*

[412] This will state, in modern terms, the OPA 1861, ss 9 &10.

[413] Some crimes against the person (such as kidnapping) require such. This section would indicate which.

[414] This will repeal all the legislation referred to in *Appendix 2*.

[415] See **19.**

[416] This combines the crimes of conspiracy ('*proposes*') and incitement (other words), it should be separated out on a consolidation.

person as in this [s] first aforesaid, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life [Obsolete] [417]

S 18. **Shooting or attempting to shoot, or wounding with intent to do [GBH].** Whosoever shall unlawfully and maliciously [intentionally] by any means whatsoever wound or cause any [GBH] to any person, with intent, to do some [GBH] to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life

S 20. **Inflicting bodily injury, with or without weapon.** Whosoever shall unlawfully and maliciously [intentionally] wound or inflict any [GBH] upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor [*obs*], and being convicted thereof shall be liable to be kept in penal servitude *(there is also a NI version)*

*S 21. **Attempting to choke, &c. in order to commit any indictable offence.** Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony [obs], and being convicted thereof shall be liable to be kept in penal servitude for life.* [418] [Not required as a separate crime]

*S 22. **Using chloroform, &c. to commit any indictable offence.** Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life.* [419] [Not required as a separate crime]

*S 23. **Maliciously administering poison, &c. so as to endanger life or inflict [GBH].** Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person [GBH], shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding [10] years.* [420] [Not required as a separate crime]

*S 24. **Maliciously administering poison, &c. with intent to injure, aggrieve, or annoy any other person.** Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable to be kept in penal servitude.* [421] [Not required as a separate crime]

S 25. **If the jury be not satisfied that any person charged is guilty of felony, but guilty of misdemeanor they may find him guilty accordingly.** If, upon the trial of any person for any felony in the last but one preceding section mentioned [i.e. s 23], the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanor [*obs*] in the last preceding section mentioned [ie s 23], then and in every such case the jury may acquit the accused of such felony, and find him guilty of such misdemeanor [*obs*], and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for such misdemeanor. [Obsolete]

*S 26. **Not providing apprentices or servants with food, &c. whereby life is endangered.** Whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable to be kept in penal servitude.* [Obsolete] [422]

*S 27. **Exposing children whereby life is endangered.** Whosoever shall unlawfully abandon or expose any child, being under the age of [2] years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude.* [423] [Not required as a separate crime]

S 28-30 (deals with Explosives (gunpowder), see Weapons Act), s 31 (*deals with spring traps (man traps), see Weapons Act*), *ss 32-4 (deals with Railways, see second article).*

*S 35. **Drivers of carriages injuring persons by furious driving.** Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful [intentional] misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person*

[417] One would agree with the Law Commission, that this crime is obsolete (it would be covered by false imprisonment, assault *etc*).

[418] This is an example of GBH *etc*. Thus, a separate crime is not required on a consolidation.

[419] Ibid.

[420] Ibid.

[421] Ibid.

[422] One would agree with the Law Commission this crime is obsolete and should be repealed. See **18**.

[423] This is duplicated in the crime of child cruelty in the CYPA 1933, see **13**.

whatsoever, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years, [Obsolete or place in a Road Traffic Act] [424]

S 36. ***Obstructing or assaulting a clergyman or other minister in the discharge of his duties.*** *Whosoever shall, by threats or force, obstruct or prevent or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place, or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this [s] aforesaid, or who to the knowledge of the offender shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years. (obs or place in a Church of England Act)* [425] [Obsolete]

S 37. ***Assaulting a magistrate, &c. on account of his preserving wreck.*** *Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding [7] years* [Obsolete or Place in a Shipping Act] [426]

S 38. ***Assault with intent to commit felony, or on peace officers, &c.*** *Whosoever shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor [obs], and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years.* [427] [Not required as a separate crime]

S 44. ***If the magistrates dismiss the complaint, they shall make out a certificate to that effect.*** *If the [JPs], upon the hearing of any such case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved, [under either of the last two preceding sections [i.e. ss 42-3, repealed],*[428] *shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.* [Obsolete]

S 45. ***Certificate or conviction shall be a bar to any other proceedings.*** *If any person against whom any such complaint as in [s] 44 of this Act shall have been preferred by or on the behalf of the party aggrieved shall have obtained such certificate, or, having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment awarded, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause*. [Obsolete]

S 47. **Assault occasioning bodily harm.** Whosoever shall be convicted upon an indictment of any assault occasioning [ABH] shall be liable to be kept in penal servitude.

S 57. **Bigamy** (*deals with bigamy, should be placed in a Family Act).*

S 58. **Administering drugs or using instruments to procure abortion.** Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life.[429]

S 59. **Procuring drugs, &c. to cause abortion.** Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude. [430]

S 60. **Concealing the birth of a child.** If any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanor [*obs*], and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [2] years. Ss 64-5 (*deal with explosives, see Weapons Act*)

Trial of Lunatics Act 1883

S 2. **Special verdict where accused found guilty, but insane at date of act or omission charged, and orders thereupon.** (1) Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person

[424] See **18**.

[425] Ibid.

[426] Ibid.

[427] This should be repealed, see **18**. In particular, it is (effectively) replaced by the Criminal Law Act 1967, s 3.

[428] This wording was repealed by the CJA 1988.

[429] This should be consolidated with other sections relating to abortion, see **11**.

[430] Ibid.

for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused is not guilty by reason of insanity.

S 3. **Extent of Act.** (1) This Act shall extend to Ireland with the following modifications, that is to say the words "*the Lord Lieutenant*" shall be substituted for "[*HM*]", and the words "*the pleasure of the Lord Lieutenant*" for *"[HMs] pleasure*". (2) This Act shall not extend to Scotland.

Infant Life (Preservation) Act 1929

S 1. **Punishment for child destruction.** (1) Subject as hereinafter in this [ss] provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life: provided that no person shall be found guilty of an offence under this [s] unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother. (2) For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of [28 weeks] weeks or more shall be *prim â facie* proof that she was at that time pregnant of a child capable of being born alive.

S 2. **Prosecution of offences.** (2) Where upon the trial of any person for the murder or manslaughter of any child, or for infanticide, or for an offence under [s 58] of the [OPA] Act 1861 (*which relates to administering drugs or using instruments to procure abortion*), the jury are of opinion that the person charged is not guilty of murder, manslaughter or infanticide, or of an offence under the said [s 58], as the case may be, but that he is shown by the evidence to be guilty of the felony of child destruction, the jury may find him guilty of that felony, and thereupon the person convicted shall be liable to be punished as if he had been convicted upon an indictment for child destruction. (3) Where upon the trial of any person for the felony of child destruction the jury are of opinion that the person charged is not guilty of that felony, but that he is shown by the evidence to be guilty of an offence under the said [s 58] of the [OPA] 1861, the jury may find him guilty of that offence, and thereupon the person convicted shall be liable to be punished as if he had been convicted upon an indictment under that [s].

Children and Young Persons Act 1933

S 1. ***Cruelty to persons under [16].*** *(1) If any person who has attained the age of [16] years and has responsibility for any child or young person under that age, wilfully [intentionally] assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature), that person shall be guilty of an offence, and shall be liable (a) on conviction on indictment, to a fine or alternatively, or in addition thereto, to imprisonment for any term not exceeding [14] years; (b) on [SC], to a fine not exceeding [£400] pounds, or alternatively, or in addition thereto, to imprisonment for any term not exceeding [6] months. (2) For the purposes of this [s] (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf; (b) where it is proved that the death of an infant under [3] years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of [16] years, that other person shall, if he was, when he went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected the infant in a manner likely to cause injury to its health. (2A) The reference in [ss] (2)(b) to the infant being "in bed" with another ("the adult") includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult "went to bed" is to be read accordingly). (2B) A drug is a prohibited drug for the purposes of [ss] (2)(b) in relation to a person if the person's possession of the drug immediately before taking it constituted an offence under [s] 5(2) of the Misuse of Drugs Act 1971. (3) A person may be convicted of an offence under this [s] (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person; (b) notwithstanding the death of the child or young person in question.* [Not needed as a separate crime][431]

S 4. **Causing or allowing persons under [16] to be used for begging.** (1) If any person causes or procures any child or young person under the age of [16] years or, having responsibility for such a child or young person, allows him to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise) he shall, on [SC], be liable to a fine not exceeding level 2 [], or alternatively, or in addition thereto, to imprisonment for any term not exceeding [3] months. (2) If a person having responsibility for a child or young person is charged with an offence under this [s], and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises, or place, he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved. (3) If any person while singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, the child shall, for the purposes of this [s], be deemed to be in that street or place for the purpose of inducing the giving of alms.

S 5. **Giving intoxicating liquor to children under [5].** If any person gives, or causes to be given, to any child under the age of [5] years any alcohol (within the meaning given by [s] 191 of the Licensing Act 2003, but disregarding [ss] (1)(f) to (i) of that [s])**]**, except upon the order

[431] This does not need to be a separate crime, but should be covered by manslaughter and GBH (ABH).

of a duly qualified medical practitioner, or in case of sickness, apprehended sickness, or other urgent cause, he shall, on [SC], be liable to a fine not exceeding level 1 []. [Should be inserted in the Licensing Act 2003]

S 7. **Sale of tobacco, &c. to persons under 18** (1) Any person who sells to a person under the age of [18] years any tobacco or cigarette papers, whether for his own use or not, shall be liable, on [SC] to a fine not exceeding level 4 []. (1A) It shall be a defence for a person charged with an offence under [ss] (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. (2) If on complaint to a magistrates' court it is proved to the satisfaction of the court that any automatic machine for the sale of tobacco kept on any premises has been used by any person under the age of **[**18] years, the court shall order the owner of the machine, or the person on whose premises the machine is kept, to take such precautions to prevent the machine being so used as may be specified in the order or, if necessary, to remove the machine, within such time as may be specified in the order, and if any person against whom such an order has been made fails to comply therewith, he shall be liable, on [SC], to a fine not exceeding level 4 []. (3) It shall be the duty of a [PO] *and of a park-keeper* being in uniform to seize any tobacco or cigarette papers in the possession of any person apparently under the age of [16] years whom he finds smoking in any street or public place, and any tobacco or cigarette papers so seized shall be disposed of, if seized by a [PO], in such manner as the local policing body may direct, *and if seized by a park-keeper, in such manner as the authority or person by whom he was appointed may direct.*[432] (4) Nothing in this [s] shall make it an offence to sell tobacco or cigarette papers to, or shall authorise the seizure of tobacco or cigarette papers in the possession of, any person who is at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or is a boy messenger in uniform in the employment of a messenger company and employed as such at the time. (5) For the purposes of this [s] the expression "*tobacco*" includes cigarettes any product containing tobacco and intended for oral or nasal use and smoking mixtures intended as a substitute for tobacco, and the expression "*cigarettes*" includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking. [Should be inserted in Act relating to Tobaaco/Smoking].

*S 11. **Exposing children under [7] to risk of burning**. If any person who has attained the age of [16] years, having responsibility for any child under the age of [12] years, allows the child to be in any room containing an open fire grate or any heating appliance liable to cause injury to a person by contact therewith not sufficiently protected to guard against the risk of his being burnt or scalded without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on [SC] be liable to a fine not exceeding level 1 [] provided that neither this [s], not any proceedings taken thereunder, shall affect any liability of any such person to be proceeded against by indictment for any indictable offence.* [433]

S 12**. Failing to provide for safety of children at entertainments.** (1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds one hundred, it shall be the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children. (2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this [s]. (3) If any person on whom any obligation is imposed by this [s] fails to fulfil that obligation, he shall be liable, on [SC], to a fine not exceeding, in the case of a first offence [50] pounds, and in the case of a second or subsequent offence [100] pounds. (4) A [PO] may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided, with a view to seeing whether the provisions of this [s] are carried into effect, and an officer authorised for the purpose by an authority by whom licences are granted under any of the enactments referred to in the last foregoing [ss] shall have the like power of entering any building so licensed by that authority. (5) The institution of proceedings under this [s] shall (a) in the case of a building in respect of which a premises licence authorising the provision of regulated entertainment has effect, be the duty of the relevant licensing authority; (b) in any other case, be the duty of the [CPO]. (5A) For the purposes of this [s] (a) "*premises licence*" and "*the provision of regulated entertainment*" have the meaning given by the Licensing Act 2003, and (b) "*the relevant licensing authority*", in relation to a building in respect of which a premises licence has effect, means the relevant licensing authority in relation to that building under [s] 12 of that Act. (6) This [s] shall not apply to any entertainment given in a private dwelling-house.

S 12A. **Restricted premises orders** (1) This [s] applies where a person ("*the offender*") is convicted of a tobacco or nicotine offence ("*the relevant offence").* (2) The person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which that offence was committed ("*the relevant premises*"). (3) A restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco, cigarette papers or nicotine product to any person. (4) The prohibition applies to sales whether made (a) by the offender or any other person, or (b) by means of any machine kept on the premises or any other means. (5) The order has effect for the period specified in the order, but that period may not exceed one year. (6) The applicant must, after making reasonable enquiries, give notice of the application to every person appearing to the applicant to be a person affected by it. (7) The court may make the order if (and only if) it is satisfied that (a) on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences in relation to the relevant premises, and (b) the applicant has complied with [ss] (6). (8) Persons affected by the application may make representations to the court as to why

[432] Today, it would not seem appropriate that a '*park keeper*' undertake police work (one imagines they would not be prepared to either).

[433] See n 431.

the order should not be made. (9) If (a) a person affected by an application for a restricted premises order was not given notice under [ss] (6), and (b) consequently the person had no opportunity to make representations to the court as to why the order should not be made, the person may by complaint apply to the court for an order varying or discharging it. (10) On an application under [ss] (9) the court may, after hearing (a) that person, and (b) the applicant for the restricted premises order, make such order varying or discharging the restricted premises order as it considers appropriate. (11) For the purposes of this [s] the persons affected by an application for a restricted premises order in respect of any premises are (a) the occupier of the premises, and(b) any other person who has an interest in the premises. [434]

12B. **Restricted sale orders** (1) This [s] applies where a person ("*the offender*") is convicted of a tobacco or nicotine offence ("*the relevant offence*"). (2) The person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted sale order to be made in respect of the offender. (3) A restricted sale order is an order prohibiting the person to whom it relates (a) from selling any tobacco, cigarette papers or nicotine product to any person, (b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco, cigarette papers or nicotine products**]** to any person, (c) from keeping any machine on any premises for the purpose of selling tobacco or nicotine products or permitting any machine to be kept on any premises by any other person for that purpose, and (d) from having any management functions in respect of any premises in so far as those functions relate to any machine kept on the premises for the purpose of selling tobacco or nicotine products. (4) The order has effect for the period specified in the order, but that period may not exceed [1] year. (5) The court may make the order if (and only if) it is satisfied that, on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences. (6) In this [s] any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products**.** [435]

12C. **Enforcement** (1) If (a) a person sells on any premises any tobacco, cigarette papers or nicotine product in contravention of a restricted premises order, and (b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order, the person commits an offence. (2) If a person fails to comply with a restricted sale order, the person commits an offence. (3) It is a defence for a person charged with an offence under [ss] (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. (4) A person guilty of an offence under this [s] is liable, on [SC], to a fine**.** (5) A restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975. [436]

12D. **Interpretation (**1) In sections 12A and 12B a "*tobacco or nicotine offence*" means (a) an offence committed under [s] 7(1) on any premises (which are accordingly "*the premises in relation to which the offence is committed*"), (b) an offence committed under [s] 7(2) in respect of an order relating to any machine kept on any premises (which are accordingly "*the premises in relation to which the offence is committed*") (c) an offence committed under [s] 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly "*the premises in relation to which the offence is committed*"), or (d) an offence committed under [s] 92 of the Children and Families Act 2014 on any premises (which are accordingly "*the premises in relation to which the offence is committed*"). (2) In sections 12A to 12C the expressions "*tobacco*" and "*cigarette"* have the same meaning as in [s] 7. (2A) In sections 12A to 12C "*nicotine product*" means a nicotine product within the meaning of [s] 92 of the Children and Families Act 2014 the sale of which to persons aged under 18 is for the time being prohibited by regulations under [ss] (1) of that [s]. (3) In sections 12A and 12B "*notice*" means notice in writing. [437]

*S 14. **Mode of charging offences and limitation of time.** (1) Where a person is charged with committing any of the offences mentioned in [sch 1] to this Act in respect of [2] or more children or young persons, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not, if he is summarily convicted, be liable to a separate penalty in respect of each child or young person except upon separate informations. (2) The same information or summons may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not, if he is summarily convicted, be liable to a separate penalty for each. (4) When any offence mentioned in the [sch 1] to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.* [Obsolete] [438]

*S 17. **Interpretation of Part I.** (1) For the purposes of this Part of this Act, the following shall be presumed to have responsibility for a child or young person (a) any person who (i) has parental responsibility for him (within the meaning of the Children Act 1989); or (ii) is otherwise legally liable to maintain him; and (b) any person who has care of him. (2) A person who is presumed to be responsible for a child or young person by virtue of [ss] (1)(a) shall not be taken to have ceased to be responsible for him by reason only that he does not have care of him.* [439]

*S 18. **Restrictions on employment of children.** (1) Subject to the provisions of this [s] and of any byelaws made thereunder no child shall be employed*

[434] This should be in an Appendix to a Crimes against the Person Act.

[435] Ibid.

[436] Ibid.

[437] Ibid.

[438] This would appear obsolete, and fails to refer to an indictment.

[439] All material on the employment of a child in this Act (including street trading and in dangerous performances) should be in an Employment Act.

(a) so long as he is under the age of [14] years or (aa) to do any work other than light work or; (b) before the close of school hours on any day on which he is required to attend school; or (c) before [7] o'clock in the morning or after [7] o'clock in the evening or any day; or (d) for more than [2] hours on any day on which he is required to attend school; or (da) for more than [12] hours in any week in which he is required to attend school; or (e) for more than [2] hours on any Sunday; or

(g) for more than [8] hours or, if he is under the age of [15] years, for more than [5] hours in any day (i) on which he is not required to attend school, and (ii) which is not a Sunday; or (h) for more than [35] hours or, if he is under the age of [15] years, for more than [25] hours in any week in which he is not required to attend school; or (i) for more than [4] hours in any day without a rest break of one hour; or (j) at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least [2] consecutive weeks without employment. (indentation for ease of reference)

(2) A local authority may make byelaws with respect to the employment of children, and any such byelaws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances, and may contain provisions (a) authorizing (i) the employment on an occasional basis of children aged [13] years (notwithstanding anything in [para] (a) of the last foregoing [ss]) by their parents or guardians in light agricultural or horticultural work. (ia) the employment of children aged [13] years (notwithstanding anything in [para] (a) of the last foregoing ss] in categories of light work specified in the byelaw (ii) the employment of children (notwithstanding anything in [para] (b) of the last foregoing [ss]) for not more than [1] hour before the commencement of school hours on any day on which they are required to attend school; (b) prohibiting absolutely the employment of children in any specified occupation; (c) prescribing (i) the age below which children are not to be employed; (ii) the number of hours in each day, or in each week, for which, and the times of day at which, they may be employed; (iii) the intervals to be allowed to them for meals and rest; (iv) the holidays or half-holidays to be allowed to them; (v) any other conditions to be observed in relation to their employment; so, however, that no such byelaws shall modify the restrictions contained in the last foregoing subsection save in so far as is expressly permitted by [para] (a) of this [ss], and any restriction contained in any such byelaws shall have effect in addition to the said restrictions. (2A) In this [s] "light work" means work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed (a) is not likely to be harmful to the safety, health or development of children; and (b) is not such as to be harmful to their attendance at school or to their participation in work experience in accordance with [s] 560 of the Education Act 1996, or their capacity to benefit from the instruction received or, as the case may be, the experience gained; "week" means any period of [7] consecutive days; and "year", except in expressions of age, means a period of [12] beginning with 1st January. (3) Nothing in this [s], or in any byelaw made under this s[], shall prevent a child from doing anything (a) under the authority of a licence granted under this Part of this Act; or (b) in a case where by virtue of [s] 37(3) of the Children and Young Persons Act 1963 no licence under that [s] is required for him to do it. (1) Subject to [ss] (2) of this [s], no child shall engage or be employed in street trading. (2) A local authority may make byelaws authorising children who have attained the age of [14] years to be employed by their parents in street trading to such extent as may be specified in the byelaws, and for regulating street trading under the byelaws by persons who are so authorised to be employed in such trading; and byelaws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions (a) forbidding any such person to engage or be employed in street trading unless he holds a licence granted by the authority, and regulating the conditions on which such licences may be granted, suspended, and revoked; (c) requiring such persons so engaged or employed to wear badges; (d) regulating in any other respect the conduct of such persons while so engaged or employed. (3) Byelaws made under [ss] (2) shall contain provisions determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading.

S 20. ***Street trading.*** *(1) Subject to [ss] (2) of this [s], no child shall engage or be employed in street trading. (2) A local authority may make byelaws authorising children who have attained the age of [14] years to be employed by their parents in street trading to such extent as may be* specified in the byelaws, and for regulating street trading under the byelaws by persons who are so authorised to be employed in such trading; and byelaws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions (a) forbidding any such person to engage or be employed in street trading unless he holds a licence granted by the authority, and regulating the conditions on which such licences may be granted, suspended, and revoked; (c) requiring such persons so engaged or employed to wear badges; (d) regulating in any other respect the conduct of such persons while so engaged or employed. (3) Byelaws made under [ss] (2) shall contain provisions determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading.

S 21. ***Penalties and legal proceedings in respect of general provisions as to employment.*** *(1) If a person is employed in contravention of any of the foregoing provisions of this Part of this Act, or of the provisions of any byelaw or regulation made thereunder, the employer and any person (other than the person employed) to whose act or default the contravention is attributable shall be liable on [SC] to a fine not exceeding* ***[*** *£50****]*** *or, in the case of a second or subsequent offence, not exceeding £100: provided that, if proceedings are brought against the employer, the employer, upon information duly laid by him and on giving to the prosecution not less than [3] days' notice of his intention, shall be entitled to have any person (other than the person employed) to whose act or default he alleges that the contravention was due, brought before the court as a party to the proceedings, and if, after the contravention has been proved, the employer proves to the satisfaction of the court that the contravention was due to the act or default of the said other person, that person may be convicted of the offence; and if the employer further proves to the satisfaction of the court that he has used all due diligence to secure that the provisions in question should be complied with, he shall be acquitted of the offence. (2) Where an employer seeks to avail himself of the proviso to the last foregoing [ss], (a) the prosecution shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his charge against the other person, and to call rebutting evidence; and (2A) Where a person is charged under this [s] with contravening [s]18(1)(j) of this Act the proviso in [ss] (1) of this [s] shall not apply, but it shall be a defence for him to prove that he used all due diligence to secure that [s] 18(1)(j) should be compiled with****]*** *(3) A child, who*

*engages in street trading in contravention of the provisions of the last foregoing [s], or of any byelaw made thereunder, shall be liable on [SC] to a fine not exceeding **[**10 pounds**]**, or in the case of a second or subsequent offence, not exceeding [20] pounds**]**.*

*S 23. **Prohibition against persons under [16] taking part in performances endangering life or limb**. No person under the age of [16] years, and no child aged [16] years, shall take part in any performance to which **[s]** 37(2) of the [CYPA] 1963 applies and in which his life or limbs are endangered and every person who causes or procures such a person or child, or being his parent or guardian allows him, to take part in such a performance, shall be liable on [SC] to a fine not exceeding £50; or in the case of a second or subsequent offence, not exceeding £100: provided that no proceedings shall be taken under this [ss] except by or with the authority of a [CPO].*

*S 24. **Restrictions on training for performances of a dangerous nature**. (1) No child under the age of [12] years shall be trained to take part in performances of a dangerous nature, and no child who has attained that age shall be trained to take part in such performances except under and in accordance with the terms of a licence granted and in force under this [s]; and every person who causes or procures a person, or being his parent or guardian allows him, to be trained to take part in performances of a dangerous nature in contravention of this [s], shall be liable on [SC] to a fine not exceeding £20 or, in the case of a second or subsequent offence, not exceeding £50. (2) A local authority may grant a licence for a child who has attained the age of [12] years to be trained to take part in performances of a dangerous nature. (4) A licence under this [s] shall specify the place or places at which the person is to be trained and shall embody such conditions as are, in the opinion of the authority, necessary for his protection, but a licence shall not be refused if the authority is satisfied that the person is fit and willing to be trained and that proper provision has been made to secure his health and kind treatment.*

*S 25. **Restrictions on persons under 18 going abroad for the purpose of performing for profit**. (1) No person having responsibility for any child shall allow him, nor shall any person cause or procure any child, to go abroad (a) for the purpose of singing, playing performing, or being exhibited, for profit, or (b) for the purpose of taking part in a sport, or working as a model, where payment in respect of his doing so, other than for defraying expenses, is made to him or to another person, unless a licence has been granted in respect of him under this [s]: provided that this [ss] shall not apply in any case where it is proved that the child was only temporarily resident within the [UK]. (2) A [JP] may grant a licence in such form as the [SS] may prescribe, and subject to such restrictions and conditions as the [JP] thinks fit, for any child who has attained the age of [14] years**]** to go abroad for any purpose referred to in [ss] (1) of this [s], but no such license shall be granted in respect of any person unless the [JP] is satisfied (a) that the application for the licence is made by or with the consent of his parent or guardian; (b) that he is going abroad to fulfil a particular engagement; (c) that he is fit for the purpose, and that proper provision has been made to secure his health, kind treatment, and adequate supervision while abroad, and his return from abroad at the expiration or revocation of the licence; (d) that there has been furnished to him a copy of the contract of employment or other document showing the terms and conditions of employment drawn up in a language understood by him. (3) A person applying for a licence under this [s], shall, at least [7] days before making the application, give to the [CPO] for the district in which the person resides to whom the application relates, notice of the intended application together with a copy of the contract of employment or other document showing the terms and conditions of employment, and the [CPO] send that copy to [JP] and may make a report in writing on the case to him or may appear, or instruct some person to appear, before him and show cause why the licence should not be granted, and **t**he [JP] shall not grant the licence unless he is satisfied that notice has been properly so given: provided that if it appears that the notice was given less than [7] days before the making of the application, the [JP] may nevertheless grant a licence if he is satisfied that the officer to whom the notice was given has made sufficient enquiry into the facts of the case and does not desire to oppose the application. (4) A licence under this section shall not be granted for more than [3] months but may be renewed by a [JP] from time to time for a like period, so, however, that no such renewal shall be granted, unless the [JP] (a) is satisfied by a report of a British consular officer or other trustworthy person that the conditions are being complied with; (b) is satisfied that the application for renewal is made by or with the consent of the parent or guardian of the person to whom the licence relates. (5) A [JP] (a) may vary a licence granted under this [s] and may at any time revoke such a licence for any cause which he, in his discretion, considers sufficient: (b) need not, when renewing or varying a licence granted under this [s], require the attendance before him of the person to whom the licence relates. (6) The [JP] to whom application is made for the grant, renewal or variation of a licence shall, unless he is satisfied that in the circumstances it is unnecessary, require the applicant to give such security as he may think fit (either by entering into a recognisance with or without sureties or otherwise) for the observance of the restrictions and conditions in the licence or in the licence as varied, and the recognisance may be enforced in like manner as a recognisance for the doing of some matter or thing required to be done in a proceeding before a relevant court is enforceable. (7) If any case where a licence has been granted under this [s], it is proved to the satisfaction of a [JP] that by reason of exceptional circumstances it is not in the interests of the person to whom the licence relates to require him to return from abroad at the expiration of the licence, then, notwithstanding anything in this [s] or any restriction or condition attached to the licence, [JP] may by order release all persons concerned from any obligation to cause that person to return from abroad. (8) Where a licence is granted, renewed or varied under this [s], the [JP] shall send the prescribed particulars to the [SS] for transmission to the proper consular officer, and every consular officer shall register the particulars so transmitted to him and perform such other duties in relation thereto as the [SS] may direct. (10) This and the next following [s] extend to Scotland and to [NI]. (11) In this [s] "the relevant court" (a) in relation to [E&W], means a magistrates' court; (b) in relation to Scotland, means a sheriff court; (c) in relation to [NI], means a court of summary jurisdiction. (s 25 applies to Scotland and NI only).*

*S 26. **Punishment of contraventions of last foregoing [s] and proceedings with respect thereto**. (1) If any person acts in contravention of the provisions of [ss] (1) of the last foregoing [s] he shall be guilty of an offence under this [s] and be liable, on [SC], to a fine not exceeding level 3 [] or, alternatively, or in addition thereto, to imprisonment for any term not exceeding [3] months: provided that if he procured the child in question to go abroad by means of any false pretence or false representation, he shall be liable on conviction on indictment to imprisonment for any term not exceeding [2] years. (2) Where, in proceedings under this [s] against a person, it is proved that he caused, procured, or allowed a*

child to go abroad and that (a) that child has while abroad been singing, playing, performing, or being exhibited, for profit, or (b) that child has while abroad taken part in a sport, or worked as a model, and payment in respect of his doing so, other than for defraying expenses, was made to him or to another person,the defendant shall be presumed to have caused, procured, or allowed him to go abroad for that purpose, unless the contrary is proved: provided that where the contrary is proved, the court may order the defendant to take such steps as the court directs to secure the return of the child to the [UK], or to enter into a recognisance to make such provision as the court may direct to secure his health, kind treatment, and adequate supervision while abroad, and his return to the [UK] at the expiration of such period as the court may think fit. (3) Proceedings in respect of an offence under this [s] or for enforcing a recognisance under this or the last foregoing [s] may be instituted at any time within a period of [3] months from the first discovery by the person taking the proceedings of the commission of the offence or, as the case may be, the non-observance, of the restrictions and conditions contained in the licence, or, if at the expiration of that period the person against whom it is proposed to institute the proceedings is outside the [UK], at any time within [6] months after his return to the [UK]. (4) In any such proceedings as aforesaid, a report of any British consular officer and any deposition made on oath before a British consular officer and authenticated by the signature of that officer, respecting the observance or non-observance of any of the conditions or restrictions contained in a licence granted under the last foregoing [s] shall, upon proof that the consular officer, or deponent, cannot be found in the [UK], be admissible in evidence, and it shall not be necessary to prove the signature or official character of the person appearing to have signed any such report or deposition. S 27 (byelaws), s 28 (power of entry), not printed.

*S 30. **Interpretation of Part II. (**1) For the purposes of this Part of this Act and of any byelaws or regulations made thereunder The expression "child" means (a) in relation to [E&W], a person who is not over compulsory school age (construed in accordance with [s] 8 of the Education Act 1996) (b) in relation to Scotland, a person who is not for the purposes of the Education (Scotland) Act 1980 over school age; and (c) in relation to [NI], a person who is not for the purposes of the Education and Libraries ([NI]) Order 1986 over compulsory school age; The expression "performance of a dangerous nature" includes all acrobatic performances and all performances as a contortionist; The expression "street trading" includes the hawking of newspapers, matches, flowers and other articles, playing, singing or performing for profit, shoe-blacking and other like occupations carried on in streets or public places; A person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour; A chorister taking part in a religious service or in a choir practice for a religious service shall not, whether he receives any reward or not, be deemed to be employed; and the expression "abroad" means outside Great Britain and Ireland. (2) This [s], so far as it has effect for the purposes of sections 25 and 26 of this Act, extends to Scotland and to [NI].*

*S 107. **Interpretation. (**1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say, "Approved school" means a school approved by the [SS] under [s 79] this Act; "Approved school order" means an order made by a court sending a person to an approved school; [obs] "[CPO] as regards Scotland means the [CC] of the Police Service of Scotland, and as regards [NI] means a district inspector of the [RUC]; "Child" means a person under the age of [14] years; "Guardian", in relation to a child or young person, includes any person who, in the opinion of the court having cognisance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the care of the child or young person; "Legal guardian", in relation to a child or young person, means a guardian of a child as defined in the Children Act 1989**;** "legal representative" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act); "Place of safety" means a community home provided by a local authority or a controlled community home, any police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person; "Prescribed" means prescribed by regulations made by the [SS]; "Public place" includes any public park, garden, sea beach or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise; "Street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; "young person" means a person who has attained the age of [14] and is under the age of [18] years. (3) References in this Act to any enactment or to any provision in any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.*

Infanticide Act 1938 [440]

S 1. **Offence of infanticide.** (1) Where a woman by any wilful [intentional] act or omission causes the death of her child being a child under the age of [12] months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child. (2) Where upon the trial of a woman for the murder or manslaughter of her child, being a child under the age of [12] months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter, return in lieu thereof a verdict of infanticide. (3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane,

[440] It is asserted that this crime should be abolished and treated as one of manslaughter, today.

Homicide Act 1957

S 2. **Persons suffering from diminished responsibility.** (1) A person ("*D*") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which (a) arose from a recognised medical condition, (b) substantially impaired D's ability to do one or more of the things mentioned in [ss] (1A), and (c) provides an explanation for D's acts and omissions in doing or being a party to the killing. (1A) Those things are (a) to understand the nature of D's conduct; (b) to form a rational judgment; (c) to exercise self-control. (1B) For the purposes of [ss] (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct. (2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this [s] not liable to be convicted of murder. (3) A person who but for this [s] would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter. (4) The fact that one party to a killing is by virtue of this [s] not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

S 4. **Suicide pacts.** (1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other being killed by a third person. (2) Where it is shown that a person charged with the murder of another killed the other or was a party to his being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other. (3) For the purposes of this [s] "*suicide pact"* means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

S 13. **Application of Parts I and III to Scotland.** (1) Part I of this Act shall not extend to Scotland.

Children & Young Persons Act 1963 [441]

*S 37. **Restriction on persons under 16 taking part in public performances, etc.** (1) Subject to the provisions of this [s], a child shall not (a) take part in a performance to which [ss] (2) of this [s] applies, or (b) otherwise take part in a sport, or work as a model, where payment in respect of his doing so, other than for defraying expenses, is made to him or to another person, except under the authority of a licence granted by the local authority in whose area he resides or, if he does not reside in Great Britain, by the local authority in whose area the applicant or one of the applicants for the licence resides or has his place of business. (2) This [ss] applies to (a) any performance in connection with which a charge is made (whether for admission or otherwise); (b) any performance in premises (i) which, by virtue of an authorisation (within the meaning of [s] 136 of the Licensing Act 2003), may be used for the supply of alcohol (within the meaning of [s]14 of that Act), or (ii) which are licensed premises (within the meaning of the Licensing (Scotland) Act 2005 (asp 16)); (c) any broadcast performance; (d) any performance not falling within [para] (c) above but included in a programme service (within the meaning of the Broadcasting Act 1990); (e) any performance recorded (by whatever means) with a view to its use in a broadcast or such a service or in a film intended for public exhibition; and a child shall be treated for the purposes of this [s] as taking part in a performance if he takes the place of a performer in any rehearsal or in any preparation for the recording of the performance. (3) A licence under this [s] shall not be required for any child to take part in a performance to which [ss] (2) of this [s] applies if no payment in respect of his taking part in the performance, other than for defraying expenses, is made to him or to another person, and (a) in the [6] months preceding the performance he has not taken part in other performances to which **[ss]** (2) of this [s] applies on more than three days; or (b) the performance is given under arrangements made by a school (within the meaning of the Education Act 1996**]** or the Education (Scotland) Act 1962) or made by a body of persons approved for the purposes of this [s] by the [SS] or by the local authority in whose area the performance takes place; but the [SS] may by regulations made by [SI] prescribe conditions to be observed with respect to the hours of work, rest or meals of children taking part in performances as mentioned in [para] (a) of this [ss]. (4) The power to grant licences under this section shall be exercisable subject to such restrictions and conditions as the [SS] may by regulations made by statutory instrument prescribe and a local authority shall not grant a licence for a child to do anything unless they are satisfied that he is fit to do it, that proper provision has been made to secure his health and kind treatment and that, having regard to such provision (if any) as has been or will be made therefor, his education will not suffer; but if they are so satisfied, in the case of an application duly made for a licence under this [s] which they have power to grant, they shall not refuse to grant the licence. (5) Regulations under this [s] may make different provision for different circumstances and may prescribe, among the conditions subject to which a licence is to be granted, conditions requiring the approval of a local authority and may provide for that approval to be given subject to conditions imposed by the authority. (6) Without prejudice to the generality of the preceding [ss], regulations under this [s] may prescribe, among the conditions subject to which a licence may be granted, a condition requiring sums earned by the child in respect of whom the licence is granted in any activity to which the licence relates to be paid into the county court (or, in Scotland, consigned in the sheriff court) or dealt with in a manner approved by the local authority. (7) A licence under this [s] shall specify the times, if any, during which the child in respect of whom it is granted may be absent from school for the purposes authorised by the licence; and for the purposes of the enactments relating to education a child who is so absent during any times so specified shall be deemed to be absent with leave granted by a person authorised in that behalf by the managers, governors or proprietor of the school or, in Scotland, with reasonable excuse. (8) Any [SI] made under this [s] shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

*S 39. **Supplementary provisions as to licences under [s] 37.** (1) A licence under [s] 37 of this Act may be varied on the application of the person holding it by the local authority by whom it was granted or by any local authority in whose area any activity to which it relates takes place. (2)*

[441] All this material should be inserted in an Employment Act, where still relevant.

The local authority by whom such a licence was granted and any local authority in whose area any activity to which it relates takes place, may vary or revoke the licence if any condition subject to which it was granted is not observed or they are not satisfied as to the matters mentioned in [ss] (4) of the said [s] 37, but shall, before doing so, give to the holder of the licence such notice (if any) of their intention as may be practicable in the circumstances. (3) Where a local authority grant such a licence authorising a child to do something in the area of another local authority they shall send to that other authority such particulars as the [SS] may by regulations made by [SI] prescribe; and where a local authority vary or revoke such a licence which was granted by, or relates to an activity in the area of, another local authority, they shall inform that other authority. (4) A local authority proposing to vary or revoke such a licence granted by another local authority shall, if practicable, consult that other authority. (5) The holder of such a licence shall keep such records as the [SS] may by regulations made by [SI] prescribe and shall on request produce them to an officer of the authority who granted the licence, at any time not later than [6] months after the occasion or last occasion to which it relates. (6) Where a local authority refuse an application for a licence under [s] 37 of this Act or revoke or, otherwise than on the application of the holder, vary such a licence they shall state their grounds for doing so in writing to the applicant or, as the case may be, the holder of the licence; and the applicant or holder may appeal to a magistrates' court or, in Scotland, the sheriff, against the refusal, revocation or variation, and against any condition subject to which the licence is granted or any approval is given, not being a condition which the local authority are required to impose. (7) Any [SI] made under this [s] shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*S 40. **Offences.** (1) If any person (a) causes or procures any child or, being his parent or guardian, allows him, to do anything in contravention of [s] 37 of this Act; or (b) fails to observe any condition subject to which a licence under that [s] is granted, or any condition prescribed under [ss] (3) of that [s]; or (c) knowingly or recklessly makes any false statement in or in connection with an application for a licence under that [s]; he shall be liable on [SC] to a fine not exceeding level 3 [] or imprisonment for a term not exceeding [3] months or both. (2) If any person fails to keep or produce any record which he is required to keep or produce under [s] 39 of this Act, he shall be liable on [SC] to a fine not exceeding level 3 [] or imprisonment for a term not exceeding [3] months or both. (3) The court by which the holder or one of the holders of a licence under [s] 37 of this Act is convicted of an offence under this [s] may revoke the licence. (4) In any proceedings for an offence under this [s] alleged to have been committed by causing, procuring or allowing a child to take part in a performance without a licence under [s] 37 of this Act it shall be a defence to prove that the accused believed that the condition specified in [para] (a) of [ss] (3) of that [s] was satisfied and that he had reasonable grounds for that belief.*

*S 41. **Licences for training persons between 12 and 16 for performances of a dangerous nature.** (1) The power to grant licences under [s] 24 of the principal Act (which relates to the training of children to take part in performances of a dangerous nature) shall be exercisable by the local authority for the area or one of the areas in which the training is to take place instead of by a magistrates' court. (2) A licence under the said [s] 24 or under [s] 34 of the principal Scottish Act (which makes provision in Scotland similar to that made in [E&W] by the said [s] 24 as amended by [ss] (1) of this [s]) may be revoked or varied by the authority who granted it if any of the conditions embodied therein are not complied with or if it appears to them that the person to whom the licence relates is no longer fit and willing to be trained or that proper provision is no longer being made to secure his health and kind treatment. (3) Where an authority refuse an application for such a licence or revoke or vary such a licence they shall state their grounds for doing so in writing to the applicant, or, as the case may be, to the holder of the licence, and the applicant or holder may appeal to a magistrates' court or, in Scotland, to the sheriff, against the refusal, revocation or variation.*

*S 42. **Licences for children and young persons performing abroad.** (1) [s] 25 of the principal Act (which prohibits children from going abroad for certain purposes except under the authority of a licence granted under that [s]) and [s] 26 of that Act (which imposes penalties for contraventions) shall have effect as if the words "singing, playing, performing or being exhibited" included taking part in any such performance as is mentioned in [para] (c) or (d) of [s] 37(2) of this Act. (2) A licence under the said [s] 25 may be granted in relation to a purpose referred to in [ss] (1)(a) of that [s] in respect of a person notwithstanding that he is under the age of [14] if (a) the engagement which he is to fulfil is for acting and the application for the licence is accompanied by a declaration that the part he is to act cannot be taken except by a person of about his age; or (b) the engagement is for dancing in a ballet which does not form part of an entertainment of which anything other than ballet or opera also forms part and the application for the licence is accompanied by a declaration that the part he is to dance cannot be taken except by a child of about his age; or (c) the engagement is for taking part in a performance the nature of which is wholly or mainly musical or which consists only of opera and ballet and the nature of his part in the performance is wholly or mainly musical.*

Criminal Procedure (Insanity) Act 1964 [442]

S 1. **Acquittal on grounds of insanity.** (*amends*).

S 4. **Finding of unfitness to plead.** (1) This [s] applies where on the trial of a person the question arises (at the instance of the defence or otherwise) whether the accused is under a disability, that is to say, under any disability such that apart from this Act it would constitute a bar to his being tried. (2) If, having regard to the nature of the supposed disability, the court are of opinion that it is expedient to do so and in the interests of the accused, they may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence. (3) If, before the question of fitness to be tried falls to be determined, the jury return a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question shall not be determined. (4) Subject to [ss] (2) and (3) above, the question of fitness to be tried shall be determined as soon as it arises. (5) The question of fitness to be tried shall be determined by the court without a jury. (6) The

[442] It is asserted that the law on insanity be modernized, with such being dealt with as a pre-trial matter using forensic experts.

court shall not make a determination under [ss] (5) above except on the written or oral evidence of [2] or more registered medical practitioners at least one of whom is duly approved.

S 4A. **Finding that the accused did the act or made the omission charged against him.** (1) This [s] applies where in accordance with [s] 4(5) above it is determined by a court that the accused is under a disability. (2) The trial shall not proceed or further proceed but it shall be determined by a jury (a) on the evidence (if any) already given in the trial; and (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this [s] to put the case for the defence, whether they are satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence. (3) If as respects that count or any of those counts the jury are satisfied as mentioned in [ss] (2) above, they shall make a finding that the accused did the act or made the omission charged against him. (4) If as respects that count or any of those counts the jury are not so satisfied, they shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion. (5) Where the question of disability was determined after arraignment of the accused, the determination under [ss] (2) is to be made by the jury by whom he was being tried.

S 5. **Powers to deal with persons not guilty by reason of insanity or unfit to plead *etc*.** (1) This [s] applies where (a) a special verdict is returned that the accused is not guilty by reason of insanity; or (b) findings have been made that the accused is under a disability and that he did the act or made the omission charged against him. (2) The court shall make in respect of the accused (a) a hospital order (with or without a restriction order); (b) a supervision order; or (c) an order for his absolute discharge. (3) Where (a) the offence to which the special verdict or the findings relate is an offence the sentence for which is fixed by law, and (b) the court have power to make a hospital order, the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this [ss]). (3A) Where the court have power under [ss] (2)(c) to make an order for the absolute discharge of the accused, they may do so where they think, having regard to the circumstances, including the nature of the offence charged and the character of the accused, that such an order would be most suitable in all the circumstances of the case. (4) In this [s] "*hospital order*" has the meaning given in [s] 37 of the Mental Health Act 1983; "restriction order" has the meaning given to it by [s] 41 of that Act; "*supervision order*" has the meaning given in Part 1 of [sch] 1A to this Act.

S 5A. ***Orders made under or by virtue of [s] 5*** *(1) In relation to the making of an order by virtue of [ss] (2)(a) of [s] 5 above, [s] 37 (hospital orders etc) of the Mental Health Act 1983 (" the 1983 Act ") shall have effect as if (a) the reference in [ss] (1) to a person being convicted before the Crown Court included a reference to the case where [s] 5 above applies; (b) the words after "punishable with imprisonment" and before "or is convicted" were omitted; and (c) for [ss] (4) and (5) there were substituted "(4) Where an order is made under this [s] requiring a person to be admitted to a hospital ("a hospital order"), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it." (2) In relation to a case where [s] 5 above applies but the court have not yet made one of the disposals mentioned in [ss] (2) of that [s] (a) [s] 35 of the 1983 Act (remand to hospital for report on accused's mental condition) shall have effect with the omission of the words after [para] (b) in [ss](3); (b) [s] 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words "(other than an offence the sentence for which is fixed by law)" in [ss] (2); (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this [ss] applies; and (d) [s] 38 of that Act (interim hospital orders) shall have effect as if (i) the reference in [ss] (1) to a person being convicted before the Crown Court included a reference to the case where [s] 5 above applies; and (ii) the words "(other than an offence the sentence for which is fixed by law)" in that [ss] were omitted. (3) In relation to the making of any order under the 1983 Act by virtue of this Act, references in the 1983 Act to an offender shall be construed as including references to a person in whose case [s] 5 above applies, and references to an offence shall be construed accordingly. (4) Where (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of [s] 5(1)(b) above, and (b) the court also made a restriction order, and that order has not ceased to have effect, the [SS], if satisfied after consultation with the responsible clinician that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison. On the person's arrival at the court or prison, the hospital order and the restriction order shall cease to have effect. (5) [sch] 1A to this Act (supervision orders) has effect with respect to the making of supervision orders under [ss](2)(b) of [s] 5 above, and with respect to the revocation and amendment of such orders. (Amends)*

S 6. **Evidence by prosecution of insanity or diminished responsibility.** Where on a trial for murder the accused contends (a) that at the time of the alleged offence he was insane so as not to be responsible according to law for his actions; or (b) that at that time he was suffering from such abnormality of mental functioning as is specified in [ss] (1) of [s] 2 of the Homicide Act 1957 (*diminished responsibility*), the court shall allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence. (*see also sch 2, supervision order*).

Criminal Law Act 1967

S 3. **Use of force in making arrest, *etc*.** (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. (2) [ss] (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the [ss] is justified by that purpose.

S 4**. Penalties for assisting offenders.** (1) Where a person has committed a relevant offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence. (1A) In this [s] and [s] 5 below, "*relevant offence*" means (a) an offence for which the sentence is fixed by law, (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of [5] years (or might be so sentenced but for the restrictions imposed by [s] 33 of the Magistrates' Courts Act 1980).**]** (2) If on the trial of an indictment for a relevant offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under [ss] (1) above of which they are satisfied that he is guilty in relation to the offence charged (or that other offence). (3) A person committing an offence under [ss] (1) above

with intent to impede another person's apprehension or prosecution shall on conviction on indictment be liable to imprisonment according to the gravity of the other person's offence, as follows: (a) if that offence is one for which the sentence is fixed by law, he shall be liable to imprisonment for not more than [10] years; (b) if it is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of [14] years, he shall be liable to imprisonment for not more than [7] years; (c) if it is not one included above but is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of [10] years, he shall be liable to imprisonment for not more than five years; (d) in any other case, he shall be liable to imprisonment for not more than [3] years. (4) No proceedings shall be instituted for an offence under [ss] (1) above except by or with the consent of the [DPP].

S 5. **Penalties for concealing offences or giving false information.** (1) Where a person has committed a relevant offence, any other person who, knowing or believing that the offence or some other relevant offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable on conviction on indictment to imprisonment for not more than [2] years. (2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he shall be liable on [SC] to imprisonment for not more than [6] months or to a fine of not more than level 4 [] or to both. (3) No proceedings shall be instituted for an offence under this [s] except by or with the consent of the [DPP]. (5) The compounding of an offence other than treason shall not be an offence otherwise than under this [s].

Abortion Act 1967 [443]

S 1. **Medical termination of pregnancy.** (1) Subject to the provisions of this [s], a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith (a) that the pregnancy has not exceeded its [24th] week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. (2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in [para] (a) or (b)**]** of [ss] (1) of this [s], account may be taken of the pregnant woman's actual or reasonably foreseeable environment. (3) Except as provided by [ss] (3B) to (4) of this [s], any treatment for the termination of pregnancy must be carried out in a hospital vested in **t**he [SS] for the purposes of his functions under the [NHS] Act 2006**]** or the [NHS] (Scotland) Act 1978 or in a hospital vested in a [NHS trust or an NHS foundation trust or in a place approved for the purposes of this [s] by the [SS]. (3A) The power under [ss] (3) of this [s] to approve a place (a) includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places (b) is not limited by [ss] (3C) and (3D). (3B) [ss] (3C) and (3D) apply where (a) the treatment referred to in [ss] (3) consists of the prescription and administration of medicine, and (b) the registered medical practitioner terminating the pregnancy is of the opinion, formed in good faith, that, if the medicine is administered in accordance with their instructions, the pregnancy will not exceed [10] weeks at the time when the medicine is administered (or in the case of a course of medicine, when the first medicine in the course is administered). (3C) If the usual place of residence of the registered medical practitioner terminating the pregnancy is in [E&W], the medicine may be prescribed from that place by the registered medical practitioner. (3D) If the pregnant woman's usual place of residence is in [E&W] and she has had a consultation (in person, by telephone or by electronic means) with a registered medical practitioner, registered nurse or registered midwife about the termination of the pregnancy, the medicine may be self-administered by the pregnant woman at that place. (4) [ss](3) of this [s], and so much of [ss] (1) as relates to the opinion of [2] registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

S 2. **Notification.** (1) The Minister of Health in respect of [E&W], and the [SS] in respect of Scotland, shall by [SI] make regulations to provide (a) for requiring any such opinion as is referred to in [s] 1 of this Act to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations; (b) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed; (c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations. (2) The information furnished in pursuance of regulations made by virtue of [para] (b) of [ss] (1) of this [s] shall be notified solely to the Chief Medical Officers of the Department of Health and Social Care, or of the Welsh Office, or of the Scottish Administration. (3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under [ss] (1) of this [s] shall be liable on [SC] to a fine not exceeding level 5 *[]. (4) Any [SI] made by virtue of this [s] shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

[443] This should be combined with relevant sections in the 1861 and 1929 Acts, see **11**.

S 3. **Application of Act to visiting forces *etc*.** (1) In relation to the termination of a pregnancy in a case where the following conditions are satisfied, that is to say (a) the treatment for termination of the pregnancy was carried out in a hospital controlled by the proper authorities of a body to which this [s] applies; and (b) the pregnant woman had at the time of the treatment a relevant association with that body; and (c) the treatment was carried out by a registered medical practitioner or a person who at the time of the treatment was a member of that body appointed as a medical practitioner for that body by the proper authorities of that body, this Act shall have effect as if any reference in [s] 1 to a registered medical practitioner and to a hospital vested in the [SS] included respectively a reference to such a person as is mentioned in [para] (c) of this [ss] and to a hospital controlled as aforesaid, and as if [s] 2 were omitted. (2) The bodies to which this [s] applies are any force which is a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 and any headquarters within the meaning of the [sch] to the International Headquarters and Defence Organisations Act 1964; and for the purposes of this [s] (a) a woman shall be treated as having a relevant association at any time with a body to which this [s] applies if at that time (i) in the case of such a force as aforesaid, she had a relevant association within the meaning of the said Part I with the force; and (ii) in the case of such a headquarters as aforesaid, she was a member of the headquarters or a dependant within the meaning of the [sch] aforesaid of such a member; and (b) any reference to a member of a body to which this [s] applies shall be construed (i) in the case of such a force as aforesaid, as a reference to a member of or of a civilian component of that force within the meaning of the said Part I; and (ii) in the case of such a headquarters as aforesaid, as a reference to a member of that headquarters within the meaning of the [sch] aforesaid.

S 4. **Conscientious objection to participation in treatment.** (1) Subject to [ss] (2) of this [s], no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection: provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it. (2) Nothing in [ss] (1) of this [s] shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman. (3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by [ss] (1) of this [s].

S 5. **Supplementary provisions.** (1) No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act. (2) For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by [s] 1 of this Act and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that [s] if (a) the ground for termination of the pregnancy specified in [ss](1)(*d*) of that [s] applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus, or (b) any of the other grounds for termination of the pregnancy specified in that [s] applies**.**

S 6. **Interpretation.** In this Act, the following expressions have meanings hereby assigned to them: "*the law relating to abortion*" means sections 58 and 59 of the [OPA] 1861, and any rule of law relating to the procurement of abortion.

Tatooing of Minors Act 1970

S 1. **Prohibition of tattooing of minors.** It shall be an offence to tattoo a person under the age of [18] except when the tattoo is performed for medical reasons by a duly qualified medical practitioner or by a person working under his direction, but it shall be a defence for a person charged to show that at the time the tattoo was performed he had reasonable cause to believe that the person tattooed was of or over the age of [18] and did in fact so believe.

S 2. **Penalties.** Any person committing such an offence shall be liable on [SC] to a fine not exceeding level 3 [] or, in the case of a second or subsequent conviction, to a fine not exceeding level 3 [].

S 3. **Definition.** For the purposes of this Act "*Tattoo*" shall mean the insertion into the skin of any colouring material designed to leave a permanent mark.

Administration of Justice Act 1970

S 40. **Punishment for unlawful harassment of debtors.** (1) A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract, he (a) harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are calculated to subject him or members of his family or household to alarm, distress or humiliation; (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it; (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or (d) utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not. (2) A person may be guilty of an offence by virtue of [ss] (1)(*a*) above if he concerts with others in the taking of such action as is described in that [para], notwithstanding that his own course of conduct does not by itself amount to harassment. (3) [ss] (1)(*a*) above does not apply to anything done by a person which is reasonable (and otherwise permissible in law) for the purpose (a) of securing the discharge of an obligation due, or believed by him to be due, to himself or to persons for whom he acts, or protecting himself or them from future loss; or (b) of the enforcement of any liability by legal process. (3A) [ss] (1) above does not apply to anything done by a person to another in circumstances where what is done is a commercial practice within the meaning of the Consumer Protection from Unfair Trading Regulations 2008 and the other is a consumer in relation to that practice. (4) A person guilty of an offence under this [s] shall be liable on [SC] to a fine of not more than £100, and on a second or subsequent conviction to a fine of not more than £400.

Children Act 1984

S 58. **Reasonable punishment: England.** (1) In relation to any offence specified in [ss] (2), battery of a child taking place in England cannot be justified on the ground that it constituted reasonable punishment. (2) The offences referred to in [ss] (1) are (a) an offence under [s] 18 or 20 of the Offences against the Person Act 1861 (c. 100) (*wounding and causing [GBH]*); (b) an offence under [s] 47 of that Act (assault occasioning [ABH]); (c) an offence under [s] 1 of the [CYPA] 1933 (c. 12) (*cruelty to persons under 16*); (d) an offence under [s] 75A of the Serious Crime Act 2015 (*strangulation or suffocation*). (3) Battery of a child taking place in England causing [ABH] to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment. (4) For the purposes of [ss] (3) "[*ABH*]" has the same meaning as it has for the purposes of [s] 47 of the Offences against the Person Act 1861. (5) In [s] 1 of the [CYPA], omit [ss] (7).

Child Abduction Act 1984

S 1. **Offence of abduction of child by parent, *etc*.** (1) Subject to [ss] (5) and (8) below, a person connected with a child under the age of [16] commits an offence if he takes or sends the child out of the [UK] without the appropriate consent. (2) A person is connected with a child for the purposes of this [s] if (a) he is a parent of the child; or (b) in the case of a child whose parents were not married to, or civil partners of, each other at the time of his birth, there are reasonable grounds for believing that he is the father of the child; or (c) he is a guardian of the child; or (ca) he is a special guardian of the child; or (d) he is a person named in a child arrangements order as a person with whom the child is to live; or (e) he has custody of the child. (3) In this [s] *'the appropriate consent'*, in relation to a child, means (a) the consent of each of the following (i) The child's mother; (ii) the child's father, if he has parental responsibility for him; (iii) any guardian of the child; (iiia) any special guardian of the child; (iv) any person named in a child arrangements order as a person with whom the child is to live; (v) any person who has custody of the child; or (b) the leave of the court granted under or by virtue of any provision of Part II of the Children Act 1989; or (c) if any person has custody of the child, the leave of the court which awarded custody to him. (4) A person does not commit an offence under this [s] by taking or sending a child out of the [UK] without obtaining the appropriate consent if (a) he is a person named in a child arrangements order as a person with whom the child is to live and he takes or sends the child out of the [UK] for a period of less than [1] month; or (b) he is a special guardian of the child and he takes or sends the child out of the [UK] for a period of less than [3] months. (4A) [ss] (4) above does not apply if the person taking or sending the child out of the [UK] does so in breach of an order under Part II of the Children Act 1989. (5) A person does not commit an offence under this [s] by doing anything without the consent of another person whose consent is required under the foregoing provisions if (a) he does it in the belief that the other person (i) has consented; or (ii) would consent if he was aware of all the relevant circumstances; or (b) he has taken all reasonable steps to communicate with the other person but has been unable to communicate with him; or (c) the other person has unreasonably refused to consent, (5A) [ss] (5)(c) above does not apply if (a) the person who refused to consent is a person (i) named in a child arrangements order as a person with whom the child is to live; (ia) who is a special guardian of the child; or (ii) who has custody of the child; or (b) the person taking or sending the child out of the [UK] is, by so acting, in breach of an order made by a court in the [UK]. (6) Where, in proceedings for an offence under this [s], there is sufficient evidence to raise an issue as to the application of [ss] (5) above, it shall be for the prosecution to prove that that [ss] does not apply. (7) For the purposes of this [s] (a) "*guardian of a child*", "*special guardian*", "*child arrangements order*" and "*parental responsibility*" have the same meaning as in the Children Act 1989; and (b) a person shall be treated as having custody of a child if there is in force an order of a court in the [UK] awarding him (whether solely or jointly with another person) custody, legal custody or care and control of the child. (8) This section shall have effect subject to the provisions of the [sch] to this Act in relation to a child who is in the care of a local authority detained in a place of safety, remanded otherwise than on bail or the subject of proceedings or an order relating to adoption.

S 2. **Offence of abduction of child by other persons.** (1) Subject to [ss] (3) below, a person, other than one mentioned in [ss] (2) below commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of [16] (a) so as to remove him from the lawful control of any person having lawful control of the child; or (b) so as to keep him out of the lawful control of any person entitled to lawful control of the child. (2) The persons are (a) where the father and mother of the child in question were married to, or civil partners of, each other at the time of his birth, the child's father and mother; (b) where the father and mother of the child in question were not married to, or civil partners of, each other at the time of his birth, the child's mother; and (c) any other person mentioned in [s] 1(2)(c) to (e) above. (3) In proceedings against any person for an offence under this [s], it shall be a defence for that person to prove (a) where the father and mother of the child in question were not married to, or civil partners of, each other at the time of his birth (i) that he is the child's father; or (ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child's father; or (b) that, at the time of the alleged offence, he believed that the child had attained the age of [16].

S 3. **Construction of references to taking, sending and detaining.** For the purposes of this Part of this Act (a) a person shall be regarded as taking a child if he causes or induces the child to accompany him or any other person or causes the child to be taken; (b) a person shall be regarded as sending a child if he causes the child to be sent; (c) a person shall be regarded as detaining a child if he causes the child to be detained or induces the child to remain with him or any other person and (d) references to a child's parents and to a child whose parents were (or were not) married to, or civil partners of, each other at the time of his birth shall be construed in accordance with [s] 1 of the Family Law Reform Act 1987 (*which extends their meaning*).

S 4. **Penalties and prosecutions.** (1) A person guilty of an offence under this Part of this Act shall be liable (a) on [SC], to imprisonment for a term not exceeding [6] months or to a fine not exceeding the statutory maximum, or to both such imprisonment and fine; (b) on conviction on indictment, to imprisonment for a term not exceeding [7] years. (2) No prosecution for an offence under [s] 1 above shall be instituted except by or with the consent of the [DPP].

S 5. **Restriction on prosecutions for offence of kidnapping.** Except by or with the consent of the [DPP] no prosecution shall be instituted for an offence of kidnapping if it was committed (a) against a child under the age of [16]; and (b) by a person connected with the child, within the meaning of [s] 1 above. See also ss 6-10 (*Scotland*).

Surrogacy Arrangements Act 1985

S 1. **Meaning of "surrogate mother", "surrogacy arrangement" [SA] and other terms.** (1) The following provisions shall have effect for the interpretation of this Act. (2) "*Surrogate mother*" means a woman who carries a child in pursuance of an arrangement (a) made before she began to carry the child, and (b) made with a view to any child carried in pursuance of it being handed over to, and parental responsibility being met (so far as practicable) by, another person or other persons. (3) An arrangement is a [SA] if, were a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother. (4) In determining whether an arrangement is [a SA] regard may be had to the circumstances as a whole (and, in particular, where there is a promise or understanding that any payment will or may be made to the woman or for her benefit in respect of the carrying of any child in pursuance of the arrangement, to that promise or understanding). (5) An arrangement may be regarded as made with such a view though subject to conditions relating to the handing over of any child. (6) A woman who carries a child is to be treated for the purposes of [ss] (2)(a) above as beginning to carry it at the time of the insemination or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be, that results in her carrying the child. (7) "*Body of persons*" means a body of persons corporate or unincorporate. (7A) "*Non-profit making body"* means a body of persons whose activities are not carried on for profit. (8) "*Payment*" means payment in money or money's worth. (9) This Act applies to arrangements whether or not they are lawful.

1A**. [SAs] unenforceable.** No [SA] is enforceable by or against any of the persons making it.

S 2. **Negotiating [SAs] on a commercial basis, etc.** (1) No person shall on a commercial basis do any of the following acts in the [UK], that is (a) initiate any negotiations with a view to the making of a [SA], (aa) take part in any negotiations with a view to the making of a [SA], (b) offer or agree to negotiate the making of a [SA], or(c) compile any information with a view to its use in making, or negotiating the making of, [SAs]; and no person shall in the [UK] knowingly cause another to do any of those acts on a commercial basis. (2) A person who contravenes [ss] (1) above is guilty of an offence; but it is not a contravention of that [ss] (a) for a woman, with a view to becoming a surrogate mother herself, to do any act mentioned in that [ss] or to cause such an act to be done, or (b) for any person, with a view to a surrogate mother carrying a child for him, to do such an act or to cause such an act to be done. (2A) A non-profit making body does not contravene [ss] (1) merely because (a) the body does an act falling within [ss] (1)(a) or (c) in respect of which any reasonable payment is at any time received by it or another, or (b) it does an act falling within [ss] (1)(a) or (c) with a view to any reasonable payment being received by it or another in respect of facilitating the making of any [SA]. (2B) A person who knowingly causes a non-profit making body to do an act falling within [ss] (1)(a) or (c) does not contravene [ss] (1) merely because (a) any reasonable payment is at any time received by the body or another in respect of the body doing the act, or (c) the body does the act with a view to any reasonable payment being received by it or another person in respect of the body facilitating the making of any [SA].(2C) Any reference in [ss] (2A) or (2B) to a reasonable payment in respect of the doing of an act by a non-profit making body is a reference to a payment not exceeding the body's costs reasonably attributable to the doing of the act. (3) For the purposes of this [s], a person does an act on a commercial basis (subject to [ss] (4) below) if (a) any payment is at any time received by himself or another in respect of it, or (b) he does it with a view to any payment being received by himself or another in respect of making, or negotiating or facilitating the making of, any [SA]. In this [ss] "*payment*" does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother. (4) In proceedings against a person for an offence under [ss] (1) above, he is not to be treated as doing an act on a commercial basis by reason of any payment received by another in respect of the act if it is proved that (a) in a case where the payment was received before he did the act, he did not do the act knowing or having reasonable cause to suspect that any payment had been received in respect of the act; and (b) in any other case, he did not do the act with a view to any payment being received in respect of it. (5) Where (a) a person acting on behalf of a body of persons takes any part in negotiating or facilitating the making of a [SA] in the [UK], and (b) negotiating or facilitating the making of [SAs] is an activity of the body, then, if the body at any time receives any payment made by or on behalf of (i) a woman who carries a child in pursuance of the arrangement, (ii) the person or persons for whom she carries it, or (iii) any person connected with the woman or with that person or those persons, the body is guilty of an offence. For the purposes of this [ss], a payment received by a person connected with a body is to be treated as received by the body. (5A) A non-profit making body is not guilty of an offence under [ss] (5), in respect of the receipt of any payment described in that [ss], merely because a person acting on behalf of the body takes part in facilitating the making of a [SA]. (6) In proceedings against a body for an offence under [ss] (5) above, it is a defence to prove that the payment concerned was not made in respect of the arrangement mentioned in [para] (a) of that [ss]. (7) A person who in the [UK] takes part in the management or control (a) of any body of persons, or (b) of any of the activities of any body of persons, is guilty of an offence if the activity described in [ss] (8) below is an activity of the body concerned. (8) The activity referred to in [ss] (7) above is negotiating or facilitating the making of [SAs] in the [UK], being (a) arrangements the making of which is negotiated or facilitated on a commercial basis, or (b) arrangements in the case of which payments are received (or treated for the purposes of [ss] (5) above as received) by the body concerned in contravention of [ss] (5) above. (8A) A person is not guilty of an offence under [ss] (7) if (a) the body of persons referred to in that [ss] is a non-profit making body, and (d) the only activity of that body which falls within [ss] (8) is facilitating the making of [SAs] in the [UK]. (8B) In [ss] (8A)(b) " *facilitating the making of [SAs]* " is to be construed in accordance with [ss] (8). (9) In proceedings against a person for an offence under [ss] (7) above, it is a defence to prove that he neither knew nor had reasonable cause to suspect that the activity described in [ss] (8) above was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within [ss] (8)(b) above shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.

S 3. **Advertisements about surrogacy.** (1) This [s] applies to any advertisement containing an indication (however expressed) (a) that any person is or may be willing to enter into a [SA] or to negotiate or facilitate the making of a [SA], or (b) that any person is looking for a woman

willing to become a surrogate mother or for persons wanting a woman to carry a child as a surrogate mother. (1A) This [s] does not apply to any advertisement placed by, or on behalf of, a non-profit making body if the advertisement relates only to the doing by the body of acts that would not contravene [s] 2(1) even if done on a commercial basis (within the meaning of [s] 2). (2) Where a newspaper or periodical containing an advertisement to which this [s] applies is published in the [UK], any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence. (3) Where an advertisement to which this [s] applies is conveyed by means of an [ECN] so as to be seen or heard (or both) in the [UK], any person who in the [UK] causes it to be so conveyed knowing it to contain such an indication as is mentioned in [ss] (1) above is guilty of an offence. (4) A person who publishes or causes to be published in the [UK] an advertisement to which this [s] applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of an [ECN]) is guilty of an offence. (5) A person who distributes or causes to be distributed in the [UK] an advertisement to which this [s] applies (not being an advertisement contained in a newspaper or periodical published outside the [UK] or an advertisement conveyed by means of an [ECN] knowing it to contain such an indication as is mentioned in [ss] (1) above is guilty of an offence.

S 4. **Offences.** (1) A person guilty of an offence under this Act shall be liable on [SC] (a) in the case of an offence under [s] 2 to a fine not exceeding level 5 [] or to imprisonment for a term not exceeding 3 months or both, (c) in the case of an offence under [s] 3 to a fine not exceeding level 5 []. (2) No proceedings for an offence under this Act shall be instituted (a) in [E&W], except by or with the consent of the [DPP]; and (b) in [NI], except by or with the consent of the [DPP] for [NI]. (3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly. (4) Where the affairs of a body corporate are managed by its members, [ss] (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. (5) In any proceedings for an offence under [s] 2 of this Act, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons or of any of the body, or by a person doing any of the acts mentioned in [ss] (1)(a) to (c) of that [s] on behalf of the body, shall be admissible as evidence of the activities of the body. (6) In relation to an offence under this Act, [s] 127(1) of the Magistrates' Courts Act 1980 (*information must be laid within [6] months of commission of offence)*, **[s]** 136(1) of the Criminal Procedure (Scotland) Act 1995 (proceedings must be commenced within that time) and [art] 19(1) of the Magistrates' Courts ([NI]) Order 1981 (*complaint must be made within that time*) shall have effect as if for the reference to [6] months there were substituted a reference to [2] years.

Police Act 1996

S 89. **Assaults on constables.** (1) Any person who assaults a [PO] in the execution of his duty, or a person assisting a [PO] in the execution of his duty, shall be guilty of an offence and liable on [SC] to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 [], or to both. (2) Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a [PO] in the execution of his duty, shall be guilty of an offence and liable [SC] to imprisonment for a term not exceeding one month or to a fine not exceeding level 3, or to both. (3) This [s] also applies to a [PO] who is a member of the Police Service of Scotland or [NI] when he is executing a warrant, or otherwise acting in [E&W], by virtue of any enactment conferring powers on him in [E&W]. (4) In this [s] references to a person assisting a constable in the execution of his duty include references to any person who is neither a constable nor in the company of a [PO] but who (a) is a member of an international joint investigation team that is led by a member of a police force; and (b) is carrying out his functions as a member of that team. (5) In this [s] "*international joint investigation team*" means any investigation team formed in accordance with (c) any international agreement to which the [UK] is a party and which is specified for the purposes of this [s] in an order made by the [SS]. *(6) A [SI] containing an order under [ss] (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament. **

Protection from Harassment Act 1997

S 1. **Prohibition of harassment.** (1) A person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. (1A) A person must not pursue a course of conduct (a) which involves harassment of [2] or more persons, and (b) which he knows or ought to know involves harassment of those persons, and (c) by which he intends to persuade any person (whether or not one of those mentioned above) (i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do. (2) For the purposes of this [s] or [s] 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other. (3) [ss] (1) or (1A) does not apply to a course of conduct if the person who pursued it shows (a) that it was pursued for the purpose of preventing or detecting crime, (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

S 2. **Offence of harassment.** (1) A person who pursues a course of conduct in breach of **[s]** 1(1) or (1A)**]** is guilty of an offence. (2) A person guilty of an offence under this [s] is liable on [SC] to imprisonment for a term not exceeding [6] months, or a fine not exceeding level 5 [], or both.

2A. **Offence of stalking** (1) A person is guilty of an offence if (a) the person pursues a course of conduct in breach of [s] 1(1), and (b) the course of conduct amounts to stalking. (2) For the purposes of [ss] (1)(b) (and [s] 4A(1)(a)) a person's course of conduct amounts to stalking of another person if (a) it amounts to harassment of that person, (b) the acts or omissions involved are ones associated with stalking, and (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person. (3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking (a) following a person, (b) contacting, or

attempting to contact, a person by any means, (c) publishing any statement or other material (i) relating or purporting to relate to a person, or (ii) purporting to originate from a person, (d) monitoring the use by a person of the internet, email or any other form of electronic communication, (e) loitering in any place (whether public or private), (f) interfering with any property in the possession of a person, (g) watching or spying on a person. (4) A person guilty of an offence under this [s] is liable on [SC] to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 [], or both. (5) In relation to an offence committed before the commencement of [s] 281(5) of the Criminal Justice Act 2003, the reference in [ss] (4) to 51 weeks is to be read as a reference to [6] months. (6) This [s] is without prejudice to the generality of [s] 2.

2B. ***Power of entry in relation to offence of stalking*** *(1) A [JP] may, on an application by a [PO], issue a warrant authorising a [PO] to enter and search premises if the [JP] is satisfied that there are reasonable grounds for believing that (a) an offence under [s] 2A has been, or is being, committed, (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, (c) the material (i) is likely to be admissible in evidence at a trial for the offence, and (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 10, 11 and 14 of the [PACE] 1984), and (d) either (i) entry to the premises will not be granted unless a warrant is produced, or (ii) the purpose of a search may be frustrated or seriously prejudiced unless a [PO] arriving at the premises can secure immediate entry to them. (2) A [PO] may seize and retain anything for which a search has been authorised under [ss] (1). (3) A [PO] may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this [s]. (4) In this [s] "premises" has the same meaning as in [s] 23 of the [PACE] Act 1984.*[444]

S 3. **Civil remedy.** (1) An actual or apprehended breach of [s] 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question. (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment. (3) Where (a) in such proceedings the High Court or the county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction, the plaintiff may apply for the issue of a warrant for the arrest of the defendant. (4) An application under [ss] (3) may be made (a) where the injunction was granted by the High Court, to a judge of that court, and (b) where the injunction was granted by the county court, to a judge of that court. (5) The judge to whom an application under [ss] (3) is made may only issue a warrant if (a) the application is substantiated on oath, and (b) the judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction. (6) Where (a) the High Court or the county court grants an injunction for the purpose mentioned in [ss](3)(a), and (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction, he is guilty of an offence. (7) Where a person is convicted of an offence under [ss] (6) in respect of any conduct, that conduct is not punishable as a contempt of court. (8) A person cannot be convicted of an offence under [ss] (6) in respect of any conduct which has been punished as a contempt of court. (9) A person guilty of an offence under [ss] (6) is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [5] years, or a fine, or both, or(b) on [SC], to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

3A**. Injunctions to protect persons from harassment within [s] 1(1A)** (1) This [s] applies where there is an actual or apprehended breach of [s]1(1A) by any person ("*the relevant person*"). (2) In such a case (a) any person who is or may be a victim of the course of conduct in question, or (b) any person who is or may be a person falling within [s] 1(1A)(c), may apply to the High Court or the county court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction. (3) [s] 3(3) to (9) apply in relation to an injunction granted under [ss] (2) above as they apply in relation to an injunction granted as mentioned in [s] 3(3)(a).

S 4. **Putting people in fear of violence.** (1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions. (2) For the purposes of this [s], the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion. (3) It is a defence for a person charged with an offence under this [s] to show that (a) his course of conduct was pursued for the purpose of preventing or detecting crime, (b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property. (4) A person guilty of an offence under this [s] is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [10] years or a fine, or both, or (b) on [SC] to imprisonment for a term not exceeding [6] months, or a fine not exceeding the statutory maximum, or both. (5) If on the trial on indictment of a person charged with an offence under this [s] the jury find him not guilty of the offence charged, they may find him guilty of an offence under [s] 2 or 2A**.** (6) The Crown Court has the same powers and duties in relation to a person who is by virtue of [ss] (5) convicted before it of an offence under [s] 2 or 2A as a magistrates' court would have on convicting him of the offence.

S 4A. **Stalking involving fear of violence or serious alarm or distress** (1) A person ("*A*") whose course of conduct (a) amounts to stalking, and (b) either (i) causes another ("*B*") to fear, on at least two occasions, that violence will be used against B, or (ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities, is guilty of an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress. (2) For the purposes of this

[444] This section should have been wholly covered be the PACE 1984.

section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion. (3) For the purposes of this [s] A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress. (4) It is a defence for A to show that (a) A's course of conduct was pursued for the purpose of preventing or detecting crime, (b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property. (5) A person guilty of an offence under this [s] is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [10] years, or a fine, or both, or (b) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court**]**, or a fine not exceeding the statutory maximum, or both. (6) In relation to an offence committed before 2 May 2022**]**, the reference in [ss] (5)(b) to the general limit in a magistrates' court is to be read as a reference to [6] months. (7) If on the trial on indictment of a person charged with an offence under this [s] the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under [s] 2 or 2A. (8) The Crown Court has the same powers and duties in relation to a person who is by virtue of [ss] (7) convicted before it of an offence under [s] 2 or 2A as a magistrates' court would have on convicting the person of the offence. (9) This [s] is without prejudice to the generality of [s] 4.

S 4B**. Offences under sections 4 and 4A committed outside the [UK].** (1) If (a) a person's course of conduct consists of or includes conduct in a country outside the [UK], (b) the course of conduct would constitute an offence under [s] 4 or 4A if it occurred in [E&W], and (c) the person is a [UK] national or is habitually resident in [E&W], the person is guilty in [E&W] of that offence. (2) In this [s] "*country*" includes territory; *"[UK] national"* means an individual who is (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, (b a person who under the British Nationality Act 1981 is a British subject, or (c) a British protected person within the meaning of that Act.

S 5. **Restraining orders on acquittal** (1) A court before which a person ("*the defendant*") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order. (2) The order may have effect for a specified period or until further order. (2A) In proceedings under this [s] both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under [s] 3. (2B) The prosecutor, the defendant or any other person mentioned in the order may apply to the court that made the order for it to be varied or discharged by a further order. (2C) Any person mentioned in the order is entitled to be heard on the hearing of an application under [ss] (2B). (2D) It is an offence for the defendant, without reasonable excuse, to do anything that the defendant is prohibited from doing by an order under this [s]. (2E) A person guilty of an offence under this [s] is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [5] years, or a fine, or both, or (b) on [SC], to imprisonment for a term not exceeding [6] months, or a fine, or both. (2F) A court dealing with a person for an offence under this [s] may vary or discharge the order in question by a further order. (3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this [s]. (4) Where (a) the Crown Court allows an appeal against conviction, or (b) a case is remitted to the Crown Court under [ss] (3), the reference in [ss] (1) to a court before which a person is acquitted of an offence is to be read as referring to that court. (5) A person made subject to an order under this [s] has the same right of appeal against the order as if (a) he had been convicted of the offence in question before the court which made the order, and (b) the order had been made under [s] 5.

S 7. **Interpretation of this group of sections.** (1) This [s] applies for the interpretation of sections 1 to 5A**.** (2) References to harassing a person include alarming the person or causing the person distress. (3) A "*course of conduct*" must involve (a) in the case of conduct in relation to a single person (see [s] 1(1)), conduct on at least two occasions in relation to that person, or (b) in the case of conduct in relation to two or more persons (see [s] 1(1A)), conduct on at least one occasion in relation to each of those persons. (3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring. (4) *"Conduct*" includes speech. (5) References to a person, in the context of the harassment of a person, are references to a person who is an individual SS 8-11 (*Scotland*)

S 12. **National security, *etc*.** (1) If the [SS] certifies that in his opinion anything done by a specified person on a specified occasion related to (a) national security, (b) the economic well-being of the [UK], or (c) the prevention or detection of serious crime, and was done on behalf of the Crown, the certificate is conclusive evidence that this Act does not apply to any conduct of that person on that occasion. (2) In [ss] (1), "*specified*" means specified in the certificate in question. (3) A document purporting to be a certificate under [ss] (1) is to be received in evidence and, unless the contrary is proved, be treated as being such a certificate.

Crime and Disorder Act 1998

S 28. **Meaning of "racially or religiously aggravated".** (1) An offence is racially or religiously aggravated for the purposes of sections 29 to 32 below if (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group; or (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group. (2) In [ss] (1)(a) above "*membership*", in relation to a racial or religious group, includes association with members of that group; "*presumed*" means presumed by the offender. (3) It is immaterial for the purposes of [para] (a) or (b) of [ss] (1) above whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that [para]. (4) In this [s] "*racial group"* means a group of persons defined by reference to race,

colour, nationality (including citizenship) or ethnic or national origins. (5) In this [s] "*religious group*" means a group of persons defined by reference to religious belief or lack of religious belief.

S 29. **Racially or religiously aggravated assaults.** (1) A person is guilty of an offence under this [s] if he commits (a) an offence under [s] 20 of the [OPA 1861] (*malicious wounding or grievous bodily harm*); (b) an offence under [s] 47 of that Act (*actual bodily harm*); (ba) an offence under [s] 75A of the Serious Crime Act 2015 (*strangulation or suffocation*); or (c) common assault, which is racially or religiously aggravated for the purposes of this [s]. (2) A person guilty of an offence falling within [ss] (1)(a), (b) or (ba) above shall be liable (a) on [SC], to imprisonment for a term not exceeding [6] months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding [7] years or to a fine, or to both. (3) A person guilty of an offence falling within [ss] (1)(c) above shall be liable (a) on [SC], to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding [2] years or to a fine, or to both.

S 32. **Racially or religiously aggravated harassment *etc*.** (1) A person is guilty of an offence under this [s] if he commits (a) an offence under [s] 2 or 2A of the Protection from Harassment Act 1997 (*offences of harassment and stalking*); or (b) an offence under [s] 4 or 4A of that Act (*putting people in fear of violence and stalking involving fear of violence or serious alarm or distress*), which is racially or religiously aggravated for the purposes of this [s]. (3) A person guilty of an offence falling within [ss] (1)(a) above shall be liable (a) on [SC], to imprisonment for a term not exceeding [6] months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding [2] years or to a fine, or to both. (4) A person guilty of an offence falling within [ss] (1)(b) above shall be liable (a) on [SC], to imprisonment for a term not exceeding [6] months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both. (5) If, on the trial on indictment of a person charged with an offence falling within [ss] (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of either basic offence mentioned in that provision. (6) If, on the trial on indictment of a person charged with an offence falling within [ss] (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within [ss] (1)(a) above.

Malicious Communications Act 1998

S 1. **Offence of sending letters etc. with intent to cause distress or anxiety.** (1) Any person who sends to another person (a) a letter, electronic communication or article of any description which conveys (i) a message which is indecent or grossly offensive; (b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature, is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within [para] (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated. (2A) In this [s] "*electronic communication*" includes (a) any oral or other communication by means of an electronic communications network (c. 12)); and (b) any communication (however sent) that is in electronic form. (3) In this [s] references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted and *"sender"* shall be construed accordingly. (4) A person guilty of an offence under this [s] is liable (a) on conviction on indictment to imprisonment for a term not exceeding [2] years or a fine (or both); (b) on [SC] to imprisonment for a term not exceeding 12 months or a fine (or both). (5) In relation to an offence committed before 2 May 2022, the reference in [ss] (4)(b) to 12 months is to be read as a reference to [6] months. (6) In relation to an offence committed before [s] 85 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in [ss] (4)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

Criminal Justice and Police Act 2001

S 42. **Police directions stopping the harassment etc of a person in his home.** (1) Subject to the following provisions of this [s], a [PO] who is at the scene may give a direction under this [s] to any person if (a) that person is present outside or in the vicinity of any premises that are used by any individual ("*the resident*") as his dwelling; (b) that [PO] believes, on reasonable grounds, that that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual (i) that he should not do something that he is entitled or required to do; or (ii) that he should do something that he is not under any obligation to do; and (c) that [PO] also believes, on reasonable grounds, that the presence of that person (either alone or together with that of any other persons who are also present) (i) amounts to, or is likely to result in, the harassment of the resident; or (ii) is likely to cause alarm or distress to the resident. (2) A direction under this [s] is a direction requiring the person to whom it is given to do all such things as the [PO] giving it may specify as the things he considers necessary to prevent one or both of the following (a) the harassment of the resident; or (b) the causing of any alarm or distress to the resident. (3) A direction under this [s] may be given orally; and where a constable is entitled to give a direction under this [s] to each of several persons outside, or in the vicinity of, any premises, he may give that direction to those persons by notifying them of his requirements either individually or all together. (4) The requirements that may be imposed by a direction under this [s] include (a) a requirement to leave the vicinity of the premises in question, and (b) a requirement to leave that vicinity and not to return to it within such period as the [PO] may specify, not being longer than 3 months; and (in either case) the requirement to leave the vicinity may be to do so immediately or after a specified period of time. (5) A direction under this [s] may make exceptions to any requirement imposed by the direction, and may make any such exception subject to such conditions as the [PO] giving the direction thinks fit; and those conditions may include (a) conditions as to the distance from the premises in question at which, or otherwise as to the location where, persons who do not leave their vicinity must remain; and (b) conditions as to the number or identity of the persons who are authorised by the exception to remain in the vicinity of those premises. (6) The power of a [PO] to give a direction under this [s] shall not include (a) any power to give a direction at any time when there is a more senior-ranking [PO] at the scene; or (b) any power to direct a person to refrain from conduct that is lawful under [s] 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (right peacefully to picket a work place); but it shall include power to vary or withdraw a direction previously given under this [s]. (7) Any person who knowingly fails to comply with a requirement in a direction

given to him under this [s] (other than a requirement under [ss] (4)(b)) shall be guilty of an offence and liable, on [SC], to imprisonment for a term not exceeding [3] months or to a fine not exceeding level 4 [], or to both. (7A) Any person to whom a [PO] has given a direction including a requirement under [ss] (4)(b) commits an offence if he (a) returns to the vicinity of the premises in question within the period specified in the direction beginning with the date on which the direction is given; and (b) does so for the purpose described in [ss](1)(b). (7B) A person guilty of an offence under [ss] (7A) shall be liable, on [SC], to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 [], or to both. (7C) In relation to an offence committed before the commencement of [s] 281(5) of the Criminal Justice Act 2003 (*alteration of penalties for summary offences*), the reference in [ss] (7B) to 51 weeks is to be read as a reference to 6 months. (9) In this [s] "*dwelling*" has the same meaning as in Part 1 of the Public Order Act 1986 (c. 64).

42A. **Offence of harassment *etc.* of a person in his home.** (1) A person commits an offence if (a) that person is present outside or in the vicinity of any premises that are used by any individual (*"the resident")* as his dwelling; (b) that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual (i) that he should not do something that he is entitled or required to do; or (ii) that he should do something that he is not under any obligation to do; (c) that person (i) intends his presence to amount to the harassment of, or to cause alarm or distress to, the resident; or (ii) knows or ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and (d) the presence of that person (i) amounts to the harassment of, or causes alarm or distress to, any person falling within [ss] (2); or (ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person. (2) A person falls within this [ss] if he is (a) the resident, (b) a person in the resident's dwelling, or (c) a person in another dwelling in the vicinity of the resident's dwelling. (3) The references in [ss] (1)(c) and (d) to a person's presence are references to his presence either alone or together with that of any other persons who are also present. (4) For the purposes of this [s] a person (A) ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect. (5) A person guilty of an offence under this [s] shall be liable, on [SC], to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 [], or to both. (6) In relation to an offence committed before the commencement of [s] 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in [ss] (5) to 51 weeks is to be read as a reference to 6 months. (7) In this [s] "*dwelling*" has the same meaning as in Part 1 of the Public Order Act 1986.

Female Genital Mutilation Act 2003 [445]

S 1. **Offence of [FGM]** (1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris. (2) But no offence is committed by an approved person who performs (a) a surgical operation on a girl which is necessary for her physical or mental health, or (b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth. (3) The following are approved persons (a) in relation to an operation falling within [ss] (2)(a), a registered medical practitioner, (b) in relation to an operation falling within [ss] (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife. (4) There is also no offence committed by a person who (a) performs a surgical operation falling within [ss] (2)(a) or (b) outside the [UK], and (b) in relation to such an operation exercises functions corresponding to those of an approved person. (5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

S 2. **Offence of assisting a girl to mutilate her own genitalia**. A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

S 3. **Offence of assisting a non-UK person to mutilate overseas a girl's genitalia** (1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a [UK] national or [UK] resident to do a relevant act of [FGM] outside the [UK]. (2) An act is a relevant act of [FGM] if (a) it is done in relation to a [UK] national or [UK] resident, and (b) it would, if done by such a person, constitute an offence under [s] 1. (3) But no offence is committed if the relevant act of [FGM] (a) is a surgical operation falling within [s] 1(2)(a) or (b), and (b) is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person.

S 3A. **Offence of failing to protect girl from risk of genital mutilation** (1) If a genital mutilation offence[446] is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence. This is subject to [ss] (5). (2) For the purposes of this [s] a person is "*responsible*" for a girl in the following two cases. (3) The first case is where the person (a) has parental responsibility for the girl, and (b) has frequent contact with her. (4) The second case is where the person (a) is aged 18 or over, and (b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent. (5) It is a defence for the defendant to show that (a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or (b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence. (6) A person is taken to have shown the fact mentioned in [ss] (5)(a) or (b) if (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and (b) the contrary is not proved beyond reasonable doubt. (7) For the purposes of [ss] (3)(b), where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there. (8) In this [s] "*genital*

[445] Administrative material in this Act should be inserted into an Appendix to a Crimes against the Person Act.

[446] This is poor drafting (creating an unnecessary additional defined term). The reference should be to a '*FGM offence'*.

mutilation offence " means an offence under [s] 1, 2 or 3 (and for the purposes of [ss] (1) the prosecution does not have to prove which [s] it is; "*parental responsibility*" (a) in [E&W], has the same meaning as in the Children Act 1989; (b) in [NI], has the same meaning as in the Children ([NI]) Order 1995 (S.I. 1995/755 (N.I. 2)); " *the relevant time* " means the time when the mutilation takes place.

S 4. **Extension of sections 1 to 3A to extra-territorial acts or omissions** (1) Sections 1 to 3 extend to any act done outside the [UK] by a [UK] national or [UK] resident. (1A) An offence under [s] 3A can be committed wholly or partly outside the [UK] by a person who is a [UK] national or a [UK] resident. (2) If an offence under this Act is committed outside the [UK] (a) proceedings may be taken, and (b) the offence may for incidental purposes be treated as having been committed, in any place in [E&W] or [NI].

S 4A. **Anonymity of victims.** [sch 1] provides for the anonymity of persons against whom a [FGM] offence (as defined in that [sch]) is alleged to have been committed.

S 5. **Penalties for offences** (1) A person guilty of an offence under [s] 1, 2 or 3 is liable (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both), (b) on [SC], to imprisonment for a term not exceeding [6] months or a fine not exceeding the statutory maximum (or both). (2) A person guilty of an offence under [s] 3A is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [7] years or a fine (or both), (b) on [SC] in [E&W], to imprisonment for a term not exceeding the general limit in a magistrates' court**]** or a fine (or both), (c) on [SC] in [NI], to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

S 5A. **[FGM] protection orders** (1) [sch] 2 provides for the making of [FGM] protection orders. (2) In that [sch] (a) Part 1 makes provision about powers of courts in [E&W] to make [FGM protection orders; (b) Part 2 makes provision about powers of courts in [NI] to make such orders.

S 5B. **Duty to notify police of [FGM]** (1) A person who works in a regulated profession in [E &W] must make a notification under this [s] (an "*FGM notification*") if, in the course of his or her work in the profession, the person discovers that an act of [FGM] appears to have been carried out on a girl who is aged under 18. (2) For the purposes of this [s] (a) a person works in a "*regulated profession*" if the person is (i) a healthcare professional, (ii) a teacher, or (iii) a social care worker in Wales; (b) a person "*discovers"* that an act of [FGM] appears to have been carried out on a girl in either of the following two cases. (3) The first case is where the girl informs the person that an act of [FGM] (however described) has been carried out on her. (4) The second case is where (a) the person observes physical signs on the girl appearing to show that an act of [FGM] has been carried out on her, and (b) the person has no reason to believe that the act was, or was part of, a surgical operation within [s] 1(2)(a) or (b). (5) An FGM notification (a) is to be made to the [CPO] for the area in which the girl resides; (b) must identify the girl and explain why the notification is made; (c) must be made before the end of one month from the time when the person making the notification first discovers that an act of [FGM] appears to have been carried out on the girl; (d) may be made orally or in writing. (6) The duty of a person working in a particular regulated profession to make an FGM notification does not apply if the person has reason to believe that another person working in that profession has previously made an FGM notification in connection with the same act of female genital mutilation. For this purpose, all persons falling within [ss] (2)(a)(i) are to be treated as working in the same regulated profession. (7) A disclosure made in an FGM notification does not breach (a) any obligation of confidence owed by the person making the disclosure, or (b) any other restriction on the disclosure of information. (8) The [SS] may by regulations amend this [s] for the purpose of adding, removing or otherwise altering the descriptions of persons regarded as working in a "*regulated profession*" for the purposes of this [s]. (9) The power to make regulations under this [s] (a) is exercisable by [SI]; (b) includes power to make consequential, transitional, transitory or saving provision. (10) *A [SI] containing regulations under this [s] is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament*. (11) In this [s] "*act of [FGM]* " means an act of a kind mentioned in [s] 1(1); *"healthcare professional*" means a person registered with any of the regulatory bodies mentioned in [s] 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (bodies within remit of the Professional Standards Authority for Health and Social Care); "*registered*", in relation to a regulatory body, means registered in a register that the body maintains by virtue of any enactment; "*social care worker*" means a person registered in a register maintained by the Care Council for Wales under [s] 56 of the Care Standards Act 2000; "*teacher"* means (a) in relation to England, a person within [s] 141A(1) of the Education Act 2002 (*persons employed or engaged to carry out teaching work at schools and other institutions in England*); (b) in relation to Wales, a person who falls within a category listed in the table in [para] 1 of [sch] 2 to the Education (Wales) Act 2014 (anaw 5) (*categories of registration for purposes of Part 2 of that Act*) or any other person employed or engaged as a teacher at a school (within the meaning of the Education Act 1996) in Wales. (12) For the purposes of the definition of "*healthcare professional*", the following provisions of [s] 25 of the National Health Service Reform and Health Care Professions Act 2002 are to be ignored (a) [para] (g) of [ss] (3); (b) [ss] (3A).

S 5C. **Guidance** (1) The [SS] may issue guidance to whatever persons in [E&W] the [SS] considers appropriate about (a) the effect of any provision of this Act, or (b) other matters relating to [FGM]. (2) A person exercising public functions to whom guidance is given under this [s] must have regard to it in the exercise of those functions. (3) Nothing in this [s] permits the [SS] to give guidance to any court or tribunal. (4) Before issuing guidance under this [s] the [SS] must consult (a)the Welsh Ministers so far as the guidance is to a devolved Welsh authority; (b) any person whom the [SS] considers appropriate. (5) In [ss] (4)(a) "*devolved Welsh authority*" has the same meaning as in the Government of Wales Act 2006 (see [s] 157A of that Act).] (6) The [SS] may from time to time revise any guidance issued under this [s]. (7) [ss] (2) and (3) have effect in relation to any revised guidance. (8) [ss] (4) has effect in relation to any revised guidance unless the [SS] considers the proposed revisions of the guidance are insubstantial. (9) The [SS] must publish the current version of any guidance issued under this [s].

S 6. **Definitions**. (1) Girl includes woman. (2) A [UK] national is an individual who is (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or (c) a British protected person within the meaning of that Act. (3) A [UK] resident is an individual who is habitually resident in the [UK]. (4) This [s] has effect for the purposes of this Act.

S 7. **Appeals.** (1) A defendant may appeal to the Crown Court against (a) the making of a [SPO], (b) the making of an interim [SPO], (c) the making of an order under [s] 4 on an application by a [CPO], or (d) the refusal to make an order under [s] 4 on an application by the defendant. (2) A [CPO] who applied for a [SPO], an interim [SPO] or an order under [s] 4 may appeal to the Crown Court against (a) the refusal to make a [SPO], (b) the refusal to make an interim [SPO], or (c) the refusal to make an order under [s] 4 on an application by the [CPO]. (3) A relevant [CPO] (see [s] 14(1)) may appeal to the Crown Court against the making of an order under [s] 4 on an application by the defendant. (4) On any such appeal, the Crown Court may make (a) such orders as may be necessary to give effect to its determination of the appeal, and (b) such incidental or consequential orders as appear to it to be appropriate.

S 8. **Offence of breaching [SPO]** ***etc*** (1) A person who, without reasonable excuse, breaches a [SPO] or an interim [SPO] commits an offence. (2) A person guilty of an offence under this [s] is liable (a) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court or to a fine or both, or (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or both. (3) In relation to an offence committed before May 2022, the reference in [ss] (2)(a) to the general limit in a magistrates' court is to be read as a reference to 6 months. (4) If a person is convicted of an offence under this [s], it is not open to the court by or before which the person is convicted to make an order under [s] 80 of the Sentencing Code (*conditional discharge*). (5) In proceedings for an offence under this [s], a copy of the original [SPO] or interim [SPO] certified by the designated officer for the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

Anti-Social Behaviour Act 2003

S 54. **Sale of aerosol paint to children** (1) A person commits an offence if he sells an aerosol paint container to a person under the age of [16]. (2) In [ss] (1) "*aerosol paint container*" means a device which (a) contains paint stored under pressure, and (b) is designed to permit the release of the paint as a spray. (3) A person guilty of an offence under this [s] shall be liable on [SC] to a fine not exceeding level 4 []. (4) It is a defence for a person charged with an offence under this [s] in respect of a sale to prove that (a) he took all reasonable steps to determine the purchaser's age, and (b) he reasonably believed that the purchaser was not under the age of [16] (5) It is a defence for a person charged with an offence under this [s] in respect of a sale effected by another person to prove that he (the defendant) took all reasonable steps to avoid the commission of an offence under this [s].

S 54A. **Enforcement of [s] 54**. (1) It is the duty of every local weights and measures authority (a) to consider, at least once in every period of [12] months, the extent to which it is appropriate for the authority to carry out in their area a programme of enforcement action in relation to [s] 54; and (b) to the extent that they consider it appropriate to do so, carry out such a programme. (2) For the purposes of [ss] (1), a programme of enforcement action in relation to [s] 54 is a programme involving all or any of the following (a) the bringing of prosecutions in respect of offences under that [s]; (b) the investigation of complaints in respect of alleged offences under that [s]; (c) the taking of other measures intended to reduce the incidence of offences under that [s].

Domestic Violence, Crime and Victims Act 2004

S 5**. The offence.** (1) A person ("D") is guilty of an offence if (a) a child or vulnerable adult ("*V*") [VP] dies or suffers serious physical harm as a result of the unlawful act of a person who (i) was a member of the same household as V, and (ii) had frequent contact with him, (b) D was such a person at the time of that act, (c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and (d) either D was the person whose act caused the death or serious physical harm or (i) D was, or ought to have been, aware of the risk mentioned in [para] (c), (ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and (iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen. (2) The prosecution does not have to prove whether it is the first alternative in [ss] (1)(d) or the second (sub-[paras] (i) to (iii)) that applies. (3) If D was not the mother or father of V (a) D may not be charged with an offence under this [s] if he was under the age of 16 at the time of the act that caused the death or serious physical harm;(b) for the purposes of [ss] (1)(d)(ii) D could not have been expected to take any such step as is referred to there before attaining that age. (4) For the purposes of this [s] (a) a person is to be regarded as a "*member*" of a particular household, even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it; (b) where V lived in different households at different times, "*the same household as V*" refers to the household in which V was living at the time of the act that caused the death or serious physical harm**.** (5) For the purposes of this [s] an "*unlawful*" act is one that (a) constitutes an offence, or (b) would constitute an offence but for being the act of (i) a person under the age of [10], or (ii) a person entitled to rely on a defence of insanity. [Para] (b) does not apply to an act of D. (6) In this [s] "*act"* includes a course of conduct and also includes omission; "*child"* means a person under the age of 16; "*serious"* harm means harm that amounts to [GBH] for the purposes of the Offences against the Person Act 1861 (c. 100); "*vulnerable adult*" means a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise. (7) A person guilty of an offence under this [s] of causing or allowing a person's death is liable (a) on conviction on indictment in [E&W], to imprisonment for life or to a fine, or to both; (b) on conviction on indictment in [NI], to imprisonment for a term not exceeding 14 years or to a fine, or to both. (8) A person guilty of an offence under this [s] of causing or allowing a person to suffer serious physical harm is liable (a) on conviction on indictment in [E&W], to imprisonment for a term not exceeding 14 years or to a fine, or to both; (b) on conviction on indictment in [NI], to imprisonment for a term not exceeding 10 years or to a fine, or to both.

S 6. **Evidence and procedure in cases of death: [E&W]** (1) [ss] (2) to (4) apply where a person ("*the defendant*") is charged in the same proceedings with an offence of murder or manslaughter and with an offence under [s] 5 in respect of the same death ("*the [s] 5 offence*"). (2) Where by virtue of [s] 35(3) of the Criminal Justice and Public Order Act 1994 (c. 33) a court or jury is permitted, in relation to the [s] 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether he is guilty (a) of murder or manslaughter, or (b) of any other offence of which he could lawfully be

convicted on the charge of murder or manslaughter, even if there would otherwise be no case for him to answer in relation to that offence. (3) The charge of murder or manslaughter is not to be dismissed under [para] 2 of [sch] 3 to the Crime and Disorder Act 1998 (c. 37) (unless the [s] 5 offence is dismissed). (4) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time he ceases to be charged with the [s] 5 offence, before that earlier time). (5) An offence under [s] 5 of causing or allowing a person's death is an offence of homicide for the purposes of the following enactments sections 24 and 25 of the Magistrates' Courts Act 1980 (c. 43) (*mode of trial of child or young person for indictable offence*); [s] 51A of the Crime and Disorder Act 1998 (*sending cases to the Crown Court: children and young persons*); [s] 25 of the Sentencing Code *(power and duty to remit young offenders to youth courts for sentence*).

S 6A**. Evidence and procedure in cases of serious physical harm: [E&W].** (1) [ss] (3) to (5) apply where a person ("*the defendant*") is charged in the same proceedings with a relevant offence and with an offence under [s] 5 in respect of the same harm ("*the [s] 5 offence*"). (2) In this [s] "*relevant offence*" means (a) an offence under [s] 18 or 20 of the [OPA] 1861 ([GBH] etc); (b) an offence under [s] 1 of the Criminal Attempts Act 1981 of attempting to commit murder; (c) an offence under [s] 75A of the Serious Crime Act 2015 *(strangulation or suffocation*). (3) Where by virtue of [s] 35(3) of the Criminal Justice and Public Order Act 1994 a court or jury is permitted, in relation to the [s] 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence. (4) The charge of the relevant offence is not to be dismissed under [para] 2 of [sch] 3 to the Crime and Disorder Act 1998 (unless the [s] offence is dismissed). (5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the [s] 5 offence, before that earlier time). S 7 (*evidence and procedure in cases of death: [NI] - not printed here*). S 7A (*evidence and procedure in cases of serious physical harm: [NI] - not printed here*).

S 8. **Evidence and procedure: the Court Martial.** (1) [s] 6(1), (2) and (4) has effect in relation to proceedings before the Court Martial with the following adaptations. (2) A reference to an offence (a) of murder, (b) of manslaughter, or (c) under [s] 5, is to be read as a reference to an offence under [s] 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of [E&W] (within the meaning given by that [s]) is that offence. (3) A reference to the court or jury is to be read as a reference to the court. (4) [s] 6A(1), (3) and (5) has effect in relation to proceedings before the Court Martial with the following adaptations. (5) A reference to an offence (a) listed in [s] 6A(2), or (b) under [s] 5, is to be read as a reference to an offence under [s] 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of [E&W](within the meaning given by that [s]) is that offence. (6) A reference to the court or jury is to be read as a reference to the court.

Corporate Manslaughter and Corporate Manslaughter Act 2007 [447]

S 1. **The offence** (1) An organisation to which this [s] applies is guilty of an offence if the way in which its activities are managed or organized (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. (2) The organisations to which this [s] applies are (a) a corporation; (b) a department or other body listed in [sch] 1; (c) a police force; (d) a partnership, or a trade union or employers' association, that is an employer. (3) An organisation is guilty of an offence under this [s] only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in [ss] (1). (4) For the purposes of this Act (a) "*relevant duty of care*" has the meaning given by [s] 2, read with sections 3 to 7; (b) a breach of a duty of care by an organisation is a "*gross*" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances; (c) "*senior management*", in relation to an organisation, means the persons who play significant roles in (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or (ii) the actual managing or organising of the whole or a substantial part of those activities. (5) The offence under this [s] is called (a) corporate manslaughter, in so far as it is an offence under the law of [E&W] or [NI]; (b) corporate homicide, in so far as it is an offence under the law of Scotland. (6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine. (7) The offence of corporate homicide is indictable only in the High Court of Justiciary.

S 2. **Meaning of "relevant duty of care"** (1) A "*relevant duty of care*", in relation to an organisation, means any of the following duties owed by it under the law of negligence (a) a duty owed to its employees or to other persons working for the organisation or performing services for it; (b) a duty owed as occupier of premises; (c) a duty owed in connection with (i) the supply by the organisation of goods or services (whether for consideration or not), (ii) the carrying on by the organisation of any construction or maintenance operations, (iii) the carrying on by the organisation of any other activity on a commercial basis, or (iv) the use or keeping by the organisation of any plant, vehicle or other thing; (d) a duty owed to a person who, by reason of being a person within [ss] (2), is someone for whose safety the organisation is responsible. (2) A person is within this [ss] if (a) he is detained at a custodial institution or in a custody area at a court a police station or customs premises; (aa) he is detained in service custody premises; (b) he is detained at a removal centre, a short-term holding facility or in pre-departure accommodation**]**; (c) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements; (d) he is living in secure accommodation in which he has been placed; (e) he is a detained patient. (3) [ss] (1) is subject to sections 3 to 7. (4) A reference in [ss] (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law. (5) For the purposes of this Act, whether a

[447] Administrative material in this Act (i.e. s 2 onwards) should be placed in an Appendix to a Crimes against the Person Act.

particular organisation owes a duty of care to a particular individual is a question of law. The judge must make any findings of fact necessary to decide that question. (6) For the purposes of this Act there is to be disregarded (a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct; (b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of his acceptance of a risk of harm. (7) In this [s] "*construction or maintenance operations*" means operations of any of the following descriptions (a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of (i) any building or structure, (ii) anything else that forms, or is to form, part of the land, or (iii) any plant, vehicle or other thing; (b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a); "*custodial institution*" means a prison, a young offender institution, a secure training centre, a secure college, a young offenders institution, a young offenders centre, a juvenile justice centre or a remand centre; "*customs premises*" means premises wholly or partly occupied by persons designated under [s] 3 (general customs officials) or 11 (customs revenue officials) of the Borders, Citizenship and Immigration Act 2009; "*detained patient*" means (a) a person who is detained in any premises under (I Part 2 or 3 of the Mental Health Act 1983 (c. 20) ("*the 1983 Act*"), or (ii) Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) ("*the 1986 Order*"); (b) a person who (otherwise than by reason of being detained as mentioned in [para] (a)) is deemed to be in legal custody by (i) [s] 137 of the 1983 Act, (ii) Article 131 of the 1986 Order, or (iii) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078); (c) a person who is detained in any premises, or is otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or who is detained in a hospital under [s] 200 of that Act of 1995; "*immigration escort arrangements*" means arrangements made under [s] 156 of the Immigration and Asylum Act 1999 (c. 33); "*the law of negligence*" includes (a) in relation to [E&W], the Occupiers' Liability Act 1957 (c. 31), the Defective Premises Act 1972 (c. 35) and the Occupiers' Liability Act 1984 (c. 3); (b) in relation to Scotland, the Occupiers' Liability (Scotland) Act 1960 (c. 30);(c) in relation to [NI], the Occupiers' Liability Act ([NI]) 1957 (c. 25), the Defective Premises ([NI]) Order 1975 (S.I. 1975/1039 (N.I. 9)), the Occupiers' Liability ([NI]) Order 1987 (S.I. 1987/1280 (N.I. 15)) and the Defective Premises (Landlord's Liability) Act ([NI]) 2001 (c. 10); "*prison escort arrangements*" means arrangements made under [s] 80 of the Criminal Justice Act 1991 (c. 53) or under [s] 102 or 118 of the Criminal Justice and Public Order Act 1994 (c. 33); "*removal centre*", "*short-term holding facility*" and "*pre-departure accommodation*" have the meaning given by [s] 147 of the Immigration and Asylum Act 1999; "*secure accommodation*" means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18. "*service custody premises*" has the meaning given by [s] 300 (7) of the Armed Forces Act 2006.

S 3. **Public policy decisions, exclusively public functions and statutory inspections** (1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a *"relevant duty of care*". (2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a *"relevant duty of care*" unless it falls within [s] 2(1)(a), (b) or (d). (3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a "*relevant duty of care*" unless it falls within [s]2(1)(a) or (b). (4) In this [s] "*exclusively public function*" means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred (a) by the exercise of that prerogative, or (b) by or under a statutory provision; "*statutory function*" means a function conferred by or under a statutory provision.

S 4**. Military activities** (1) Any duty of care owed by the [MOD] in respect of (a) operations within [ss] (2), (b) activities carried on in preparation for, or directly in support of, such operations, or (c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations, is not a "*relevant duty of care*". (2) The operations within this [ss] are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance. (3) Any duty of care owed by the Ministry of Defence in respect of activities carried on by members of the special forces is not a "*relevant duty of care*". (4) In this [s] "*the special forces*" means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Director of Special Forces or which are for the time being subject to the operational command of that Director.

S 5. **Policing and law enforcement** (1) Any duty of care owed by a public authority in respect of (a) operations within [ss] (2), (b) activities carried on in preparation for, or directly in support of, such operations, or (c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations, is not a "*relevant duty of care*". (2) Operations are within this [ss] if (a) they are operations for dealing with terrorism, civil unrest or serious disorder, (b) they involve the carrying on of policing or law-enforcement activities, and (c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations. (3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a "*relevant duty of care*" unless it falls within [s] 2(1)(a), (b) or (d). (4) In this [s] "*policing or law-enforcement activities*" includes (a) activities carried on in the exercise of functions that are (i) functions of police forces, or (ii) functions of the same or a similar nature exercisable by public authorities other than police forces; (b) activities carried on in the exercise of functions of constables employed by a public authority; (c) activities carried on in the exercise of functions exercisable under Chapter 4 of Part 2 of the Serious Organised Crime and Police Act 2005 (c. 15) (*protection of witnesses and other persons*); (d) activities carried on to enforce any provision contained in or made under the Immigration Acts.

S 6. **Emergencies.** (1) Any duty of care owed by an organisation within [ss] (2) in respect of the way in which it responds to emergency circumstances is not a "*relevant duty of care*" unless it falls within [s] 2(1)(a) or (b). (2) The organisations within this subsection are (a) a fire and

rescue authority in [E&W]; (b) the Scottish Fire and Rescue Service; (c) the [NI] Fire and Rescue Service Board; (d) any other organisation providing a service of responding to emergency circumstances either (i) in pursuance of arrangements made with an organisation within [para] (a), (b) or (c), or (ii) (if not in pursuance of such arrangements) otherwise than on a commercial basis; (e) a relevant NHS body; (f) an organisation providing ambulance services in pursuance of arrangements (i) made by, or at the request of, a relevant NHS body, or (ii) made with the [SS] or with the Welsh Ministers; (g) an organisation providing services for the transport of organs, blood, equipment or personnel in pursuance of arrangements of the kind mentioned in [para] (f); (h) an organisation providing a rescue service; (i) the armed forces. (3) For the purposes of [ss] (1), the way in which an organisation responds to emergency circumstances does not include the way in which (a) medical treatment is carried out, or (b) decisions within [ss] (4) are made. (4) The decisions within this [ss] are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment. (5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a *"relevant duty of care*" unless it falls within [s] 2(1)(a) or (b). (6) Any duty of care owed in respect of action taken (a) in order to comply with a direction under [sch] 3A to the Merchant Shipping Act 1995 (c. 21) (*safety directions*), or (b) by virtue of [para] 4 of that [sch] (*action in lieu of direction*), is not a "*relevant duty of care*" unless it falls within [s] 2(1)(a) or (b). (7) In this [s] "*emergency circumstances*" means circumstances that are present or imminent and (a) are causing, or are likely to cause, serious harm or a worsening of such harm, or (b) are likely to cause the death of a person; "*medical treatment*" includes any treatment or procedure of a medical or similar nature; "*relevant NHS body*" means (za) NHS England; (a) an integrated care board, NHS trust, Special Health Authority or NHS foundation trust in England; (b) a Local Health Board, NHS trust or Special Health Authority in Wales; (c) a Health Board or Special Health Board in Scotland, or the Common Services Agency for the Scottish Health Service; (d) a Health and Social Care trust in [NI]; "*serious harm*" means (a) serious injury to or the serious illness (including mental illness) of a person; (b) serious harm to the environment (including the life and health of plants and animals); (c) serious harm to any building or other property. (8) A reference in this [s] to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

S 7. **Child-protection and probation functions** (1) A duty of care to which this [s] applies is not a "*relevant duty of care*" unless it falls within [s] 2(1)(a), (b) or (d). (2) This [s] applies to any duty of care that a local authority or other public authority owes in respect of the exercise by it of functions conferred by or under (a) Parts 4 and 5 of the Children Act 1989 (c. 41), (b) Part 2 of the Children (Scotland) Act 1995 (c. 36), or (ba) the Children's Hearings (Scotland) Act 2011, (c) Parts 5 and 6 of the Children ([NI]) Order 1995 (S.I. 1995/755 (N.I. 2)). (3)This [s] also applies to any duty of care that a local probation board, a provider of probation services or other public authority owes in respect of the exercise by it of functions conferred by or under (a) Chapter 1 of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43), (aa) [s]13 of the Offender Management Act 2007 (c. 21), (b) [s] 27 of the Social Work (Scotland) Act 1968 (c. 49), or (c) Article 4 of the Probation Board ([NI]) Order 1982 (S.I. 1982/713 (N.I. 10)). (4) This [s] also applies to any duty of care that a provider of probation services owes in respect of the carrying out by it of activities in pursuance of arrangements under [s] 3 of the Offender Management Act 2007.

S 8. **Factors for jury.** (1) This [s] applies where (a) it is established that an organisation owed a relevant duty of care to a person, and (b) it falls to the jury to decide whether there was a gross breach of that duty. (2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so (a) how serious that failure was; (b) how much of a risk of death it posed. (3) The jury may also (a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in [ss] (2), or to have produced tolerance of it; (b) have regard to any health and safety guidance that relates to the alleged breach. (4) This [s] does not prevent the jury from having regard to any other matters they consider relevant. (5) In this [s] "*health and safety guidance"* means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

S 9. **Power to order breach etc to be remedied** (1) A court before which an organisation is convicted of corporate manslaughter or corporate homicide may make an order (a "*remedial order*") requiring the organisation to take specified steps to remedy (a) the breach mentioned in [s] 1(1) ("*the relevant breach*"); (b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death; (c) any deficiency, as regards health and safety matters, in the organisation's policies, systems or practices of which the relevant breach appears to the court to be an indication. (2) A remedial order may be made only on an application by the prosecution specifying the terms of the proposed order. Any such order must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the organisation. (3) Before making an application for a remedial order the prosecution must consult such enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach. (4) A remedial order (a) must specify a period within which the steps referred to in [ss] (1) are to be taken; (b) may require the organisation to supply to an enforcement authority consulted under [ss] (3), within a specified period, evidence that those steps have been taken. A period specified under this [ss] may be extended or further extended by order of the court on an application made before the end of that period or extended period. (5) An organisation that fails to comply with a remedial order is guilty of an offence, and liable on conviction on indictment to a fine.

S 10. **Power to order conviction etc to be publicized** (1) A court before which an organisation is convicted of corporate manslaughter or corporate homicide may make an order (a "*publicity order*") requiring the organisation to publicise in a specified manner (a) the fact that it has been convicted of the offence; (b) specified particulars of the offence; (c) the amount of any fine imposed; (d) the terms of any remedial order made. (2) In deciding on the terms of a publicity order that it is proposing to make, the court must (a) ascertain the views of such enforcement authority or authorities (if any) as it considers appropriate, and (b) have regard to any representations made by the prosecution or on behalf of the organisation. (3) A publicity order (a) must specify a period within which the requirements referred to in [ss] (1) are to be complied with; (b) may

require the organisation to supply to any enforcement authority whose views have been ascertained under [ss] (2), within a specified period, evidence that those requirements have been complied with. (4) An organisation that fails to comply with a publicity order is guilty of an offence, and liable on conviction on indictment to a fine.

S 11. **Application to Crown bodies** (1) An organisation that is a servant or agent of the Crown is not immune from prosecution under this Act for that reason. (2) For the purposes of this Act (a) a department or other body listed in [sch] 1, or (b) a corporation that is a servant or agent of the Crown, is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a servant or agent of the Crown. (3) For the purposes of [s] 2 (a) a person who is (i) employed by or under the Crown for the purposes of a department or other body listed in [sch] 1, or (ii) employed by a person whose staff constitute a body listed in that [sch], is to be treated as employed by that department or body; (b) any premises occupied for the purposes of (i) a department or other body listed in [sch] 1, or (ii) a person whose staff constitute a body listed in that [sch], are to be treated as occupied by that department or body. (4) For the purposes of sections 2 to 7 anything done purportedly by a department or other body listed in [sch] 1, although in law by the Crown or by the holder of a particular office, is to be treated as done by the department or other body itself. (5) [ss] (3)(a)(i), (3)(b)(i) and (4) apply in relation to a [NI] department as they apply in relation to a department or other body listed in [sch] 1.

S 12. **Application to armed forces** (1) In this Act "*the armed forces"* means any of the naval, military or air forces of the Crown raised under the law of the [UK]. (2) For the purposes of [s] 2 a person who is a member of the armed forces is to be treated as employed by the [MOD]. (3) A reference in this Act to members of the armed forces includes a reference to (a) members of the reserve forces (within the meaning given by [s] 1(2) of the Reserve Forces Act 1996 (c. 14)) when in service or undertaking training or duties; (b) persons serving on [HMs] vessels (within the meaning given by [s] 132(1) of the Naval Discipline Act 1957 (c. 53)).

S 13. **Application to police forces** (1) In this Act "*police force*" means (a) a police force within the meaning of (i) the Police Act 1996 (c. 16), (aa) the Police Service of Scotland; (b) the Police Service of [NI]; (c) the Police Service of [NI] Reserve; (d) the [BTP] Force; (e) the [CNC]; (f) the [MOD] Police. (2) For the purposes of this Act a police force is to be treated as owing whatever duties of care it would owe if it were a body corporate. (3) For the purposes of [s] 2 (a) a member of a police force is to be treated as employed by that force; (b) a special [PO] appointed for a police area in [E&W] is to be treated as employed by the police force maintained by the local policing body for that area; (c) a special constable appointed for a police force mentioned in [para] (d) or (f) of [ss] (1) is to be treated as employed by that force; (d) a police cadet undergoing training with a view to becoming a member of a police force mentioned in [para] (a), (aa)**]** or (d) of [ss] (1) is to be treated as employed by that force; (e) a police trainee appointed under [s] 39 of the Police ([NI]) Act 2000 (c. 32) or a police cadet appointed under [s] 42 of that Act is to be treated as employed by the Police Service of [NI]; (f) a police reserve trainee appointed under [s] 40 of that Act is to be treated as employed by the Police Service of [NI] Reserve; (g) a member of a police force seconded to the [NCA] to serve as a [NCA] officer is to be treated as employed by that Agency. (4) A reference in [ss] (3) to a member of a police force is to be read, in the case of **t**he Police Service of Scotland, as a reference to a [PO] of that Service. (5) For the purposes of [s] 2 any premises occupied for the purposes of a police force are to be treated as occupied by that force. (6) For the purposes of sections 2 to 7 anything that would be regarded as done by a police force if the force were a body corporate is to be so regarded. (7) Where (a) by virtue of [ss] (3) a person is treated for the purposes of [s] 2 as employed by a police force, and (b) by virtue of any other statutory provision (whenever made) he is, or is treated as, employed by another organisation, the person is to be treated for those purposes as employed by both the force and the other organisation.

S 14. **Application to partnerships.** (1) For the purposes of this Act a partnership is to be treated as owing whatever duties of care it would owe if it were a body corporate. (2) Proceedings for an offence under this Act alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of its members). (3) A fine imposed on a partnership on its conviction of an offence under this Act is to be paid out of the funds of the partnership. (4) This [s] does not apply to a partnership that is a legal person under the law by which it is governed.

S 15**. Procedure, evidence and sentencing** (1) Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under this Act against (a) a department or other body listed in [sch] 1, (b) a police force, (c) a partnership, (d) a trade union, or (e) an employers' association that is not a corporation, as it applies in relation to proceedings against a corporation. (2) In this [s] "*prescribed"* means (a) in relation to proceedings under this Act in [E &W] , prescribed by an order made by the [SS]; (b) in relation to proceedings under this Act in [NI], prescribed by an order made by the Department of Justice in [NI]; "*provision about criminal proceedings*" includes (a) provision about procedure in or in connection with criminal proceedings; (b) provision about evidence in such proceedings; (c) provision about sentencing, or otherwise dealing with, persons convicted of offences; "*statutory*" means contained in, or in an instrument made under, any Act or any [NI] legislation. (3) A reference in this [s] to proceedings (except in the definition of "*prescribed*" in [ss] (2)) is to proceedings in [E&W] or [NI]. (4) An order of the [SS] under this [s] is subject to negative resolution procedure.

S 16. **Transfer of functions** (1) This [s] applies where (a) a person's death has occurred, or is alleged to have occurred, in connection with the carrying out of functions by a relevant public organisation, and (b) subsequently there is a transfer of those functions, with the result that they are still carried out but no longer by that organisation. (2) In this [s] "*relevant public organisation*" means (a) a department or other body listed in Schedule 1; (b) a corporation that is a servant or agent of the Crown; (c) a police force. (3) Any proceedings instituted against a relevant public organisation after the transfer for an offence under this Act in respect of the person's death are to be instituted against (a) the relevant public organisation, if any, by which the functions mentioned in [ss] (1) are currently carried out; (b) if no such organisation currently carries out the functions, the relevant public organisation by which the functions were last carried out. This is subject to [ss] (4). (4) If an order made by the Secretary of State so provides in relation to a particular transfer of functions, the proceedings referred to in [ss] (3) may be instituted, or (if they have already been instituted) may be continued, against (a) the organisation mentioned in [ss] (1), or (b) such relevant public organisation (other

than the one mentioned in [ss] (1) or the one mentioned in [ss] (3)(a) or (b)) as may be specified in the order. (5) If the transfer occurs while proceedings for an offence under this Act in respect of the person's death are in progress against a relevant public organisation, the proceedings are to be continued against (a) the relevant public organisation, if any, by which the functions mentioned in [ss] (1) are carried out as a result of the transfer; (b) if as a result of the transfer no such organisation carries out the functions, the same organisation as before. This is subject to [ss] (6). (6) If an order made by the [SS] so provides in relation to a particular transfer of functions, the proceedings referred to in [ss] (5) may be continued against (a) the organisation mentioned in [ss] (1), or (b) such relevant public organisation (other than the one mentioned in [ss] (1) or the one mentioned in [ss] (5)(a) or (b)) as may be specified in the order. (7) An order under [ss] (4) or (6) is subject to negative resolution procedure.

*S 17. **DPP's consent required for proceedings.** Proceedings for an offence of corporate manslaughter (a) may not be instituted in [E&W] without the consent of the [DPP]; (b) may not be instituted in [NI] without the consent of the [DPP] for [NI].*

S 18. **No individual liability.** (1) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter. (1A) An individual cannot be guilty of an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) by reference to an offence of corporate manslaughter. (2) An individual cannot be guilty of aiding, abetting, counselling or procuring, or being art and part in, the commission of an offence of corporate homicide.

S 19. **Convictions under this Act and under health and safety legislation** (1) Where in the same proceedings there is (a) a charge of corporate manslaughter or corporate homicide arising out of a particular set of circumstances, and (b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances, the jury may, if the interests of justice so require, be invited to return a verdict on each charge. (2) An organisation that has been convicted of corporate manslaughter or corporate homicide arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances. (3) In this [s] "*health and safety offence*" means an offence under any health and safety legislation. **S 20.** (*Abolition of liability of corporations for manslaughter at common law*) *(spent)*

S 21. **Power to extend [s]1 to other organisations** (1) The [SS] may by order amend [s] 1 so as to extend the categories of organisation to which that [s] applies. (2) An order under this [s] may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by virtue of [ss] (1). (3) An order under this section is subject to affirmative resolution procedure.

S 22. **Power to amend [sch] 1** (1) The [SS] may amend [sch] 1 by order. (2) A [SI] containing an order under this section is subject to affirmative resolution procedure, unless the only amendments to [sch] 1 that it makes are amendments within[ss] (3). In that case the instrument is subject to negative resolution procedure. (3) An amendment is within this [ss] if (a) it is consequential on a department or other body listed in [sch] 1 changing its name, (b) in the case of an amendment adding a department or other body to [sch] 1, it is consequential on the transfer to the department or other body of functions all of which were previously exercisable by one or more organisations to which [s] 1 applies, or (c) in the case of an amendment removing a department or other body from [sch] 1, it is consequential on (i) the abolition of the department or other body, or (ii) the transfer of all the functions of the department or other body to one or more organisations to which [s] 1 applies.

S 23**. Power to extend [s]n 2(2)** (1) The [SS] may by order amend [s] 2(2) to make it include any category of person (not already included) who (a) is required by virtue of a statutory provision to remain or reside on particular premises, or (b) is otherwise subject to a restriction of his liberty. (2) An order under this [s] may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by virtue of [ss] (1). (3) An order under this [s] is subject to affirmative resolution procedure.

23A**. Powers of Department of Justice in [NI]** (1) The power to make an order under any of the following provisions is exercisable by the Department of Justice in [NI] (and not by the [SS]) so far as the power may be used to make provision which could be made by an Act of the [NI] Assembly without the consent of the [SS] (see sections 6 to 8 of the [NI] Act 1998). (2) The provisions are (a) [s] 16(4); (b) [s] 16(6); (c) [s] 21; (d) [s] 22; (e) section 23. (3) None of the following applies in relation to a power of the Department of Justice to make an order by virtue of this section (a) [s] 16(7); (b) [s] 21(3); (c) section 22(2); (d) section 23(3).

S 24. **Orders** (1) A power of the [SS] to make an order under this Act is exercisable by [SI]. (2) Where an order under this Act is subject to "negative resolution procedure" the [SI] containing the order is subject to annulment in pursuance of a resolution of either House of Parliament. (3) Where an order under this Act is subject to "*affirmative resolution procedure*" the order may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament. (4) An order under this Act (a) may make different provision for different purposes; (b) may make transitional or saving provision. (5) A power of the Department of Justice in [NI] to make an order under this Act is exercisable by statutory rule for the purposes of the Statutory Rules ([NI]) Order 1979. (6) An order made by the Department of Justice under section 15 or 16 is subject to negative resolution (within the meaning of [s] 41(6) of the Interpretation Act ([NI] 1954). (7) No order shall be made by the Department of Justice under [s] 21 or 23 or (subject to [ss] (8)) [s] 22, unless a draft of it has been laid before, and approved by a resolution of, the [NI] Assembly. (8) If the only amendments to [sch] 1 made by an order of the Department of Justice under [s] 22 are amendments within [ss] (3) of that [s] (a) [ss] (7) of this [s] does not apply to the making of the order, and (b) the order is subject to negative resolution (within the meaning of [s] 41(6) of the Interpretation Act ([NI]) 1954). (9) No order shall be made by the Department of Justice under [s] 27 bringing into force [para] (d) of [s] 2(1) unless a draft of the order has been laid before, and approved by a resolution of, the [NI] Assembly.(10) [s] 41(3) of the Interpretation Act ([NI]) 1954 applies for the purposes of [ss] (7) and (9) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

S 25. **Interpretation** In this Act "*armed forces*" has the meaning given by [s] 12(1); "*corporation*" does not include a corporation sole but includes any body corporate wherever incorporated; "employee" means an individual who works under a contract of employment or

apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly; see also sections 11(3)(a), 12(2) and 13(3) (which apply for the purposes of section 2); "*employers' association*" has the meaning given by section 122 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or [art] 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)); "*enforcement authority*" means an authority responsible for the enforcement of any health and safety legislation; "*health and safety legislation*" means any statutory provision dealing with health and safety matters, including in particular provision contained in the Health and Safety at Work etc. Act 1974 (c. 37) or the Health and Safety at Work ([NI]) Order 1978 (S.I. 1978/1039 (N.I. 9)) **[**F3and provision dealing with health and safety matters contained in Part 3 of the Energy Act 2013 (nuclear regulation)**]**; "*member*", in relation to the armed forces, is to be read in accordance with [s] 12(3); "*partnership"* means (a) a partnership within the Partnership Act 1890 (c. 39), or (b)a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), or a firm or entity of a similar character formed under the law of a country or territory outside the [UK]; "*police force*" has the meaning given by [s] 13(1); "*premises*" includes land, buildings and moveable structures; "*public authority*" has the same meaning as in [s] 6 of the Human Rights Act 1998 (c. 42) (disregarding [ss] (3)(a) and (4) of that [s]); "*publicity order*" means an order under [s]10(1); "*remedial order*" means an order under [s] 9(1); "*statutory provision*", except in [s] 15, means provision contained in, or in an instrument made under, any Act, any Act of the Scottish Parliament or any [NI] legislation; "*trade union*" has the meaning given by [s] 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations ([NI]) Order 1992 (S.I. 1992/807 (N.I. 5)).

Serious Crime Act 2007

S 44. **Intentionally encouraging or assisting an offence.** (1) A person commits an offence if (a) he does an act capable of encouraging or assisting the commission of an offence; and (b) he intends to encourage or assist its commission. (2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

S 45. **Encouraging or assisting an offence believing it will be committed.** A person commits an offence if (a) he does an act capable of encouraging or assisting the commission of an offence; and (b) he believes (i) that the offence will be committed; and (ii) that his act will encourage or assist its commission.

S 46**. Encouraging or assisting offences believing one or more will be committed.** (1) A person commits an offence if (a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and (b) he believes (i) that one or more of those offences will be committed (but has no belief as to which); and (ii) that his act will encourage or assist the commission of one or more of them. (2) It is immaterial for the purposes of [ss] (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted. (3) If a person is charged with an offence under [ss] (1) (a) the indictment must specify the offences alleged to be the "*number of offences*" mentioned in [para] (a) of that [ss]; but (b) nothing in [para] (a) requires all the offences potentially comprised in that number to be specified. (4) In relation to an offence under this [s], reference in this Part to the offences specified in the indictment is to the offences specified by virtue of [ss] (3)(a).

S 47. **Proving an offence under this Part** (1) Sections 44, 45 and 46 are to be read in accordance with this [s]. (2) If it is alleged under section 44(1)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence. (3) If it is alleged under [s] 45(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed (a) that an act would be done which would amount to the commission of that offence; and (b) that his act would encourage or assist the doing of that act. (4) If it is alleged under [s] 46(1)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed (a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and (b) that his act would encourage or assist the doing of one or more of those acts. (5) In proving for the purposes of this section whether an act is one which, if done, would amount to the commission of an offence (a) if the offence is one requiring proof of fault, it must be proved that (i) D believed that, were the act to be done, it would be done with that fault; (ii) D was reckless as to whether or not it would be done with that fault; or (iii) D's state of mind was such that, were he to do it, it would be done with that fault; and (b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that (i) D believed that, were the act to be done, it would be done in those circumstances or with those consequences; or (ii) D was reckless as to whether or not it would be done in those circumstances or with those consequences. (6) For the purposes of [ss] (5)(a)(iii), D is to be assumed to be able to do the act in question. (7) In the case of an offence under [s] 44 (a) [ss] (5)(b)(i) is to be read as if the reference to "*D believed*" were a reference to "*D intended or believed*"; but (b) D is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of his act of encouragement or assistance. (8) Reference in this [s] to the doing of an act includes reference to (a) a failure to act; (b) the continuation of an act that has already begun; (c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence). (9) In the remaining provisions of this Part (unless otherwise provided) a reference to the anticipated offence is (a) in relation to an offence under [s] 44, a reference to the offence mentioned in [ss] (2); and (b) in relation to an offence under [s] 45, a reference to the offence mentioned in [ss] (3).

S 48. **Proving an offence under [s] 46.**(1) This [s] makes further provision about the application of [s] 47 to an offence under [s] 46. (2) It is sufficient to prove the matters mentioned in [s] 47(5) by reference to one offence only. (3) The offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment. (4) [ss] (3) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to [s] 57.

S 49. **Supplemental provisions.** (1) A person may commit an offence under this Part whether or not any offence capable of being encouraged or assisted by his act is committed. (2) If a person's act is capable of encouraging or assisting the commission of a number of offences (a) [s] 44

applies separately in relation to each offence that he intends to encourage or assist to be committed; and (b) [s] 45 applies separately in relation to each offence that he believes will be encouraged or assisted to be committed. (3) A person may, in relation to the same act, commit an offence under more than one provision of this Part. (4) In reckoning whether (a) for the purposes of [s] 45, an act is capable of encouraging or assisting the commission of an offence; or (b) for the purposes of [s] 46, an act is capable of encouraging or assisting the commission of one or more of a number of offences; offences under this Part and listed offences are to be disregarded. (5) "*Listed offence*" means (a) in [E&W], an offence listed in Part 1, 2 or 3 of [sch] 3; and (b) in [NI], an offence listed in Part 1, 4 or 5 of that [sch]. (6) The [SS] may by order amend [sch] 3. (6A) The power to make an order under [ss] (6) for the purposes of subsection (5)(b) is exercisable by the Department of Justice in [NI] (and not by the [SS]) so far as the power may be used to make provision which could be made by an Act of the [NI] Assembly without the consent of the [SS] (see sections 6 to 8 of the [NI] Act 1998). (7) For the purposes of sections 45(b)(i) and 46(1)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

Criminal Justice and Immigration Act 2008

S 76. **Reasonable force for purposes of self-defence etc.** (1) This [s] applies where in proceedings for an offence (a) an issue arises as to whether a person charged with the offence ("*D*") is entitled to rely on a defence within [ss] (2), and (b) the question arises whether the degree of force used by D against a person ("*V*") was reasonable in the circumstances. (2) The defences are (a) the common law defence of self-defence; and (aa) the common law defence of defence of property; and (b) the defences provided by [s] 3(1) of the Criminal Law Act 1967 (c. 58) or [s] 3(1) of the Criminal Law Act ([NI]) 1967 (c. 18 (N.I.)) (*use of force in prevention of crime or making arrest*). (3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and [ss] (4) to (8) also apply in connection with deciding that question. (4) If D claims to have held a particular belief as regards the existence of any circumstances (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of [ss] (3), whether or not (i) it was mistaken, or (ii) (if it was mistaken) the mistake was a reasonable one to have made. (5) But [ss] (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced. (5A) In a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances. (6) In a case other than a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances. (6A) In deciding the question mentioned in [ss] (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat. (7) In deciding the question mentioned in [ss] (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and (b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. (8) [ss] (6A) and (7) are**]** not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in [ss] (3).

(8A) For the purposes of this [s] "*a householder case*" is a case where (a) the defence concerned is the common law defence of self-defence, (b) the force concerned is force used by D while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), (c) D is not a trespasser at the time the force is used, and (d) at that time D believed V to be in, or entering, the building or part as a trespasser. (8B) Where (a) a part of a building is a dwelling where D dwells, (b) another part of the building is a place of work for D or another person who dwells in the first part, and (c) that other part is internally accessible from the first part, that other part, and any internal means of access between the two parts, are each treated for the purposes of [ss] (8A) as a part of a building that is a dwelling. (8C) Where (a) a part of a building is forces accommodation that is living or sleeping accommodation for D, (b) another part of the building is a place of work for D or another person for whom the first part is living or sleeping accommodation, and (c) that other part is internally accessible from the first part, that other part, and any internal means of access between the two parts, are each treated for the purposes of [ss] (8A) as a part of a building that is forces accommodation. (8D) [ss] (4) and (5) apply for the purposes of [ss] (8A) (d) as they apply for the purposes of [ss] (3). (8E) The fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser for the purposes of [ss] (8A). (8F) In [ss] (8A) to (8C) "*building*" includes a vehicle or vessel, and "*forces accommodation*" means service living accommodation for the purposes of Part 3 of the Armed Forces Act 2006 by virtue of [s] 96(1)(a) or (b) of that Act.**]** (9) This [s], except so far as making different provision for householder cases, is intended to clarify the operation of the existing defences mentioned in [ss] (2). (10) In this [s] (a) "*legitimate purpose*" means (i) the purpose of self-defence under the common law, or (ia) the purpose of defence of property under the common law, or (ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in [ss] (2)(b); (b) references to self-defence include acting in defence of another person; and (c) references to the degree of force used are to the type and amount of force used.

Coroners and Justice Act 2009

S 54. **Partial defence to murder: loss of [self] control** [LSC]. (1) Where a person ("*D*") kills or is a party to the killing of another ("*V*"), D is not to be convicted of murder if (a) D's acts and omissions in doing or being a party to the killing resulted from D's [LSC], (b) the loss of self-control had a qualifying trigger, and (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D. (2) For the purposes of [ss](1)(a), it does not matter whether or not the loss of control was sudden. (3) In [ss] (1)(c) the reference to "*the circumstances of D*" is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint. (4) [ss] (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge. (5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under [ss] (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that

it is not. (6) For the purposes of [ss] (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply. (7) A person who, but for this [s], would be liable to be convicted of murder is liable instead to be convicted of manslaughter. (8) The fact that one party to a killing is by virtue of this [s] not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

S 55. **Meaning of "qualifying trigger"** (1) This [s] applies for the purposes of [s] 54. (2) A loss of self-control had a qualifying trigger if [ss] (3), (4) or (5) applies. (3) This [ss] applies if D's [LSC] was attributable to D's fear of serious violence from V against D or another identified person. (4) This [ss] applies if D's [LSC] was attributable to a thing or things done or said (or both) which (a) constituted circumstances of an extremely grave character, and (b) caused D to have a justifiable sense of being seriously wronged. (5) This [ss] applies if D's [LSC] was attributable to a combination of the matters mentioned in [ss] (3) and (4). (6) In determining whether a [LSC] had a qualifying trigger (a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence; (b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence; (c) the fact that a thing done or said constituted sexual infidelity is to be disregarded. (7) In this [s] references to "*D*" and "*V*" are to be construed in accordance with [s] 54.

Serious Crime Act 2015

S 75A**. Strangulation or suffocation** (1) A person ("A") commits an offence if (a) A intentionally strangles another person ("*B*"), or (b) A does any other act to B that (i) affects B's ability to breathe, and (ii) constitutes battery of B. (2) It is a defence to an offence under this [s] for A to show that B consented to the strangulation or other act. (3) But [ss] (2) does not apply if (a) B suffers serious harm as a result of the strangulation or other act, and (b) A either (i) intended to cause B serious harm, or (ii) was reckless as to whether B would suffer serious harm. (4) A is to be taken to have shown the fact mentioned in [ss] (2) if (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and (b) the contrary is not proved beyond reasonable doubt. (5) A person guilty of an offence under this [s] is liable (a) on [SC] (i) to imprisonment for a term not exceeding the general limit in a magistrates' court (or 6 months, if the offence was committed before 2 May 2022), or (ii) to a fine, or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both. (6) In this[s] "*serious harm*" means (a) [GBH], within the meaning of [s] 18 of the [OPA] 1861, (b) wounding, within the meaning of that [s], or (c) [ABH, within the meaning of [s] 47 of that Act.

S 75B **Offences under [s] 75A committed outside the [UK]** (1) If (a) a person does an act in a country outside the [UK], (b) the act, if done in [E&W], would constitute an offence under [s] 75A, and (c) the person is a [UK] national or is habitually resident in [E&W], the person is guilty in [E&W] of that offence. (2) In this [s] "*country*" includes territory; *"[UK] national*" means an individual who is (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, (b) a person who under the British Nationality Act 1981 is a British subject, or (c) a British protected person within the meaning of that Act.

S 76. **Controlling or coercive behaviour in an intimate or family relationship** (1) A person (A) commits an offence if (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive, (b) at the time of the behaviour, A and B are personally connected (see [ss] (6))**,** (c) the behaviour has a serious effect on B, and(d) A knows or ought to know that the behaviour will have a serious effect on B.(3) But A does not commit an offence under this [s] if at the time of the behaviour in question (a) A has responsibility for B, for the purposes of Part 1 of the [CYPA] Act 1933 (see [s] 17 of that Act), and (b) B is under 16. (4) A's behaviour has a "*serious effect*" on B if (a) it causes B to fear, on at least two occasions, that violence will be used against B, or (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities. (5) For the purposes of [ss] (1)(d) A "*ought to know*" that which a reasonable person in possession of the same information would know. (6) A and B are "*personally connected*" if any of the following applies (a) they are, or have been, married to each other; (b) they are, or have been, civil partners of each other; (c) they have agreed to marry one another (whether or not the agreement has been terminated); (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated); (e) they are, or have been, in an intimate personal relationship with each other; (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see [ss] (6A)); (g) they are relatives. (6A) For the purposes of [ss] (6)(f) a person has a parental relationship in relation to a child if (a) the person is a parent of the child, or (b) the person has parental responsibility for the child. (7) In [ss] (6) and (6A) "*civil partnership agreement*" has the meaning given by [s] 73 of the Civil Partnership Act 2004; "*child*" means a person under the age of 18 years; "*parental responsibility*" has the same meaning as in the Children Act 1989; "*relative*" has the meaning given by [s] 63(1) of the Family Law Act 1996. (8) In proceedings for an offence under this [s] it is a defence for A to show that (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and (b) the behaviour was in all the circumstances reasonable. (9) A is to be taken to have shown the facts mentioned in [ss] (8) if (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and (b) the contrary is not proved beyond reasonable doubt. (10) The defence in [ss] (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B. (11) A person guilty of an offence under this [s] is liable (a) on conviction on indictment, to imprisonment for a term not exceeding [5] years, or a fine, or both; (b) on [SC] to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both.

S 76A**. Offences under [s] 76 committed outside the [UK].** (1) If (a) a person's behaviour consists of or includes behaviour in a country outside the [UK], (b) the behaviour would constitute an offence under [s] 76 if it occurred in [E&W], and (c) the person is a [UK] national or is habitually resident in [E&W], the person is guilty in [E&W] of that offence.(2) In this [s] "*country*" includes territory; "*[UK] national*" means an individual who is (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, (b) a person who under the British Nationality Act 1981 is a British subject, or (c) a British protected person within the meaning of that Act.

S 77. **Guidance about investigation of offences under [s] 76.** (1) The [SS] may issue guidance about the investigation of offences under [s] 76 to whatever persons the [SS] considers appropriate. (2) The [SS] may revise any guidance issued under this [s]. (3) The [SS] must arrange for any guidance issued or revised under this [s] to be published.

Modern Slavery Act 2015

S 1. **Slavery, servitude and forced or compulsory labour.** (1) A person commits an offence if (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour. (2) In [ss] (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with [art] 4 of the Human Rights Convention. (3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances. (4) For example, regard may be had (a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons; (b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within [s] 3(3) to (6). (5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

S 2. **Human trafficking.** (1) A person commits an offence if the person arranges or facilitates the travel of another person ("*V*") with a view to V being exploited. (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child). (3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V. (4) A person arranges or facilitates V's travel with a view to V being exploited only if (a) the person intends to exploit V (in any part of the world) during or after the travel, or (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel. (5) "*Travel*" means (a) arriving in, or entering, any country, (b) departing from any country, (c) travelling within any country. (6) A person who is a UK national commits an offence under this [s] regardless of (a) where the arranging or facilitating takes place, or (b) where the travel takes place. (7) A person who is not a UK national commits an offence under this [s] if (a) any part of the arranging or facilitating takes place in the [UK], or (b) the travel consists of arrival in or entry into, departure from, or travel within, the [UK].

S 3. **Meaning of exploitation.** (1) For the purposes of [s] 2 a person is exploited only if one or more of the following [ss] apply in relation to the person. Slavery, servitude and forced or compulsory labour**.** (2) The person is the victim of behaviour (a) which involves the commission of an offence under [s] 1, or (b) which would involve the commission of an offence under that [s] if it took place in [E&W]. (3) Something is done to or in respect of the person (a) which involves the commission of an offence under (i) [s]1(1)(a) of the Protection of Children Act 1978 (*indecent photographs of children*), or (ii) Part 1 of the Sexual Offences Act 2003 (*sexual offences*), as it has effect in [E&W], or (b) which would involve the commission of such an offence if it were done in [E&W]. (4) The person is encouraged, required or expected to do anything (a) which involves the commission, by him or her or another person, of an offence under [s] 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in [E&W], or (b) which would involve the commission of such an offence, by him or her or another person, if it were done in [E&W]. (5) The person is subjected to force, threats or deception designed to induce him or her (a) to provide services of any kind, (b) to provide another person with benefits of any kind, or (c) to enable another person to acquire benefits of any kind. (6) Another person uses or attempts to use the person for a purpose within [para] (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that (a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and (b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.

S 4. **Committing offence with intent to commit offence under [s] 2.** A person commits an offence under this [s] if the person commits any offence with the intention of committing an offence under [s] 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that [s]).

S 5. **Penalties.** (1) A person guilty of an offence under [s] 1 or 2 is liable (a) on conviction on indictment, to imprisonment for life; (b) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine or both. (2) A person guilty of an offence under [s] 4 is liable (unless [ss] (3) applies) (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years; (b) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine or both. (3) Where the offence under [s] 4 is committed by kidnapping or false imprisonment, a person guilty of that offence is liable, on conviction on indictment, to imprisonment for life. (4) In relation to an offence committed before 2 May 2022, the references in [ss] (1)(b) and (2)(b) to the general limit in a magistrates' court are to be read as references to 6 months. (ss 6 and 7 (*amend)*).

Assaults on Emergency Workers (Offences) Act 2018

S 1. **Common assault and battery** (1) The [s] applies to an offence of common assault, or battery, that is committed against an emergency worker acting in the exercise of functions as such a worker. (2) A person guilty of an offence to which this [s] applies is liable (a) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court, or to a fine, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both. (3) For the purposes of [ss] (1), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of

functions as an emergency worker. (4) In relation to an offence committed before 2 May 2022, the reference in [ss] (2)(a) to the general limit in a magistrates' court is to be read as a reference to 6 months. (5) *(amends*). (6) This [s] applies only in relation to offences committed on or after the day it comes into force.

S 3. **Meaning of "emergency worker".** (1) In sections 1 and 2, "*emergency worker"* means (a) a [PO]; (b) a person (other than a constable) who has the powers of a [PO] or is otherwise employed for police purposes or is engaged to provide services for police purposes; (c) a National Crime Agency officer; (d) a prison officer; (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer; (f) a prisoner custody officer, so far as relating to the exercise of escort functions; (g) a custody officer, so far as relating to the exercise of escort functions; (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services; (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both); (j) a person employed for the purposes of providing, or engaged to provide (i) NHS health services, or (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public. (2) It is immaterial for the purposes of [ss] (1) whether the employment or engagement is paid or unpaid. (3) In this [s] "*custodial institution*" means any of the following (a) a prison; (b) a young offender institution, secure training centre, secure college or remand centre; (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by [s] 147 of the Immigration and Asylum Act 1999; (d) services custody premises, as defined by [s] 300(7) of the Armed Forces Act 2006; "*custody officer*" has the meaning given by [s] 12(3) of the Criminal Justice and Public Order Act 1994; "*escort functions*" (a) in the case of a prisoner custody officer, means the functions specified in [s] 80(1) of the Criminal Justice Act 1991; (b) in the case of a custody officer, means the functions specified in [para] 1 of [sch] 1 to the Criminal Justice and Public Order Act 1994; "*NHS health services*" means any kind of health services provided as part of the health service continued under [s] 1(1) of the [NHS] Act 2006 and under[s] 1(1) of the [NHS] (Wales) Act 2006; "*prisoner custody officer*" has the meaning given by [s] 89(1) of the Criminal Justice Act 1991.

Stalking Protection Act 2019 [448]

S. 1**. Applications for orders.** (1) A [CPO] may apply to a magistrates' court for an order (a "s*talking protection order*") [SPO] in respect of a person (the "*defendant*") if it appears to the [CPO] that (a) the defendant has carried out acts associated with stalking, (b) the defendant poses a risk associated with stalking to another person, and (c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in [para] (a)). (2) A [SPO] is an order which, for the purpose of preventing the defendant from carrying out acts associated with stalking (a) prohibits the defendant from doing anything described in the order, or (b) requires the defendant to do anything described in the order. (3) A [CPO] for a police area in [E&W] may apply for a [SPO] only in respect of a person (a) who resides in the [CPOs] police area, or (b) who the [CPO] believes is in that area or is intending to come to it. (4) A risk associated with stalking (a) may be in respect of physical or psychological harm to the other person; (b) may arise from acts which the defendant knows or ought to know are unwelcome to the other person even if, in other circumstances, the acts would appear harmless in themselves. (5) It does not matter (a) whether the acts mentioned in [ss] (1)(a) were carried out in a part of the [UK] or elsewhere, or (b) whether they were carried out before or after the commencement of this [s]. (6) See [s] 2A of the Protection from Harassment Act 1997 for examples of acts associated with stalking.

S 2. **Power to make orders** (1) A magistrates' court may make a [SPO] on an application under [s] 1(1) if satisfied that (a) the defendant has carried out acts associated with stalking, (b) the defendant poses a risk associated with stalking to another person, and (c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in [para] (a)). (2) A magistrates' court may include a prohibition or requirement in a [SPO] only if satisfied that the prohibition or requirement is necessary to protect the other person from a risk associated with stalking. (3) Prohibitions or requirements must, so far as practicable, be such as to avoid (a) conflict with the defendant's religious beliefs, and (b) interference with any times at which the defendant normally works or attends an educational establishment. (4) A prohibition or requirement has effect in all parts of the [UK] unless expressly limited to a particular locality. (5) It does not matter (a) whether the acts mentioned in [ss] (1)(a) were carried out in a part of the [UK] or elsewhere, or (b) whether they were carried out before or after the commencement of this [s]. (6) [ss] (7) applies where a magistrates' court makes a [SPO] in relation to a defendant who is already subject to such an order (whether made by that court or another). (7) The court may not include any prohibition or requirement in the new [SPO] which is incompatible with a prohibition or requirement in the earlier [SPO].

S 3. **Duration of orders.** (1) A [SPO] has effect (a) for a fixed period specified in the order, or (b) until a further order. (2) Where a fixed period is specified it must be a period of at least 2 years beginning with the day on which the order is made. (3) Different periods may be specified in relation to different prohibitions or requirements.

S 4. **Variations, renewals and discharges** (1) The defendant or a relevant [CPO] (see [s] 14(1)) may apply to a magistrates' court for an order varying, renewing or discharging a [SPO]. (2) Before making a decision on an application under [ss] (1), the court must hear (a) the defendant, and (b) any relevant [CPO] who wants to be heard. (3) On an application under [ss] (1) the court may make any order varying, renewing or discharging the [SPO] that the court considers appropriate. (4) But the court may not (a) in renewing or varying an order, impose an additional prohibition or requirement unless satisfied that it is necessary to do so in order to protect a person from a risk associated with stalking; (b) discharge an order before the end of 2 years beginning with the day on which the order was made without the consent of the defendant and (i)

[448] Administrative material should be placed in an Appendix to a Crimes against the Person Act.

where the application was made by a [CPO], that [CPO], or (ii) in any other case, the [CPO] who applied for the [SPO] and (if different) the [CPO] for the area in which the defendant resides, if that area is in [E&W].

S 5. **Interim [SPO].** (1) This [s] applies where an application for a [SPO] (the "*main application*") has not been determined. (2) A magistrates' court may make an order (an "*interim stalking protection order*") in respect of the defendant on an application (a) made at the same time and by the same [CPO] as the main application, or (b) if the main application has already been made, made by the [CPO] who made that application. (3) The court may, if it considers it appropriate to do so, make an interim [SPO] (a) prohibiting the defendant from doing anything described in the order, or (b) requiring the defendant to do anything described in the order. (4) Prohibitions or requirements must, so far as practicable, be such as to avoid (a) conflict with the defendant's religious beliefs, and (b) interference with any times at which the defendant normally works or attends an educational establishment. (5) A prohibition or requirement has effect in all parts of the [UK] unless expressly limited to a particular locality. (6) An interim [SPO] (a) has effect only for a fixed period specified in the order, and (b) ceases to have effect, if it has not already done so, on the determination of the main application. (7) The defendant or the [CPO] who applied for an interim [SPO] may apply to a magistrates' court for an order varying, renewing or discharging the interim [SPO]. (8) On an application under [ss] (7), the court may make any order varying, renewing or discharging the [SPO] that the court considers appropriate.

S 6. **Content of orders.** A [SPO] and an interim [SPO] must specify (a) the date on which the order is made; (b) whether it has effect for a fixed period and, if it does, the length of that period; (c) each prohibition or requirement that applies to the defendant; (d) whether any prohibition or requirement is expressly limited to a particular locality and, if it is, what the locality is; (e) whether any prohibition or requirement is subject to a fixed period which differs from the period for which the order has effect and, if it is, what that period is.

S 7. **Notification requirements.** (1) A person subject to (a) a [SPO] (other than one which replaces an interim [SPO]), or (b) an interim [SPO], must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in [ss] (2). (2) The information is (a) the person's name and, where the person uses one or more other names, each of those names; (b) the person's home address. (3) A person who (a) is subject to a [SPO] or an interim [SPO], and (b) uses a name which has not been notified under this [s], must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police that name. (4) A person who (a) is subject to a [SPO] or an interim [SPO], and (b) changes home address, must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police the new home address. (5) The requirements imposed by this [s] do not apply to a person who is subject to notification requirements under Part 2 of the Sexual Offences Act 2003. (6) [ss] (7) applies where (a) a person is subject to a [SPO] or an interim [SPO], (b) at the time the order is made, the requirements imposed by this [s] do not apply to the person as a result of [ss] (5), (c) the person ceases on a subsequent day ("*the final day*") to be subject to the notification requirements mentioned in that [ss], and (d) the order remains in effect on the final day. (7) The requirements imposed by this [s] apply to the person as from the final day, but as if the reference in [ss] (1) to the date of service of the order were a reference to the final day.

S 10. **Method of notification and related matters.** (1) A person whose home address is in [E&W] gives a notification under [s] 9(1), (3) or (4) by (a) attending at a police station in the person's local police area, and (b) giving an oral notification to a [PO], or to any person authorised for the purpose by the officer in charge of the station. (2) A person who does not have a home address in [E&W] gives a notification under [s] 9(1), (3) or (4) by (a) attending at a police station in the local police area in which the magistrates' court which last made a [SPO] or an interim [SPO] in respect of the person is situated, and (b) giving an oral notification to a [PO], or to any person authorised for the purpose by the officer in charge of the station. (3) In relation to a person giving a notification under [s] 9(4), the references in [ss] (1) and (2) to the person's home address are references to (a) the person's new home address if the person gives the notification after changing home address, or (b) the person's old home address if the person gives the notification before changing home address. (4) A notification given in accordance with this [s] must be acknowledged (a) in writing, and (b) in such form as the [SS] may direct. (5) When a person gives notification under [s] 9(1), (3) or (4), the person must, if requested to do so by the [PO] or person mentioned in [ss] (1)(b), allow that officer or person to (a) take the person's fingerprints, (b) photo[] any part of the person, or (c) do both of these things. (6) The power in [ss] (5) is exercisable for the purpose of verifying the identity of the person.

S 11. **Offences relating to notification** (1) A person commits an offence if the person (a) fails, without reasonable excuse, to comply with [s] 9(1), (3) or (4), or with [s] 10(5), or (b) notifies to the police, in purported compliance with [s] 9(1), (3) or (4), any information which the person knows to be false. (2) A person guilty of an offence under this [s] is liable (a) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court or to a fine or both, or (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or both. (3) A person commits an offence under [ss] (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with [s] 9(1), (3) or (4). (4) The person continues to commit the offence throughout any period during which the failure continues. (5) But the person may not be prosecuted more than once in respect of the same failure. (6) Proceedings for an offence under this [s] may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found. (7) In relation to an offence committed before 2 May 2022, the reference in [ss] (2)(a) to the general limit in a magistrates' court is to be read as a reference to 6 months.

S 12. **Guidance** (1) The [SS] must issue guidance to [CPOs] about the exercise of their functions under this Act. (2) The [SS] may, from time to time, revise the guidance issued under [ss] (1). (3) The [SS] must arrange for any guidance issued or revised under this section to be published in such manner as the [SS] considers appropriate.

S 13**. Procedure** (1) An application to a magistrates' court under any provision of this Act is to be by complaint. (2) [s] 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under any provision of this Act.

S 14. **Interpretation** (1) In this Act "*acts*" includes omissions; "[CPO]" means (a) the [CC] of a police force maintained under [s] 2 of the Police Act 1996 (*police forces in [E&W] outside London*); (b) the Commissioner of Police of the Metropolis; (c) the Commissioner of Police for the City of London; (d) the [CC] of the [BTP]; (e) the [CC] of the [MOD] Police; "*defendant*" has the meaning given by [s] 1(1); "*home address*", in relation to a person, means (a) the address of the person's sole or main residence in the [UK], or (b) if the person has no such residence, the address or location of a place in the [UK] where the person can regularly be found and, if there is more than one such place, such of those places as the person may select; "*interim [SPO]* " has the meaning given by [s] 5(2); "*local police area*", in relation to a person, means (a) the police area in which the person's home address is situated, (b) in the absence of a home address, the police area in which the home address last notified is situated (whether that notification was in accordance with the requirements imposed by [s] 9 or in accordance with notification requirements under Part 2 of the Sexual Offences Act 2003), or (c) in the absence of a home address and of any such notification, the police area in which the magistrates' court which last made a [SPO] or an interim [SPO] in respect of the person is situated; "*magistrates' court"*, in relation to a defendant under the age of 18, means youth court; "*photo[]"* includes any process by means of which an image may be produced; "*relevant [CPO]*", in relation to an application for an order under [s] 4 or to an appeal under [s] 7, means (a) the [CPO] for the area in which the defendant resides, (b) a [CPO] who believes that the defendant is in, or is intending to come to, that [CPO's] area, and (c) the [CPO] who applied for the [SPO] to which the application or appeal relates; "[*SPO*]" has the meaning given by [s] 1(1). (2) In this Act, references to a "*risk associated with stalking*" are to be read in accordance with [s] 1(4).

Sentencing Act 2020

S 359**. Restraining order ('RO')** (1) In this Code "*RO*" means an order made under [s] 360 against a person which prohibits the person from doing anything described in the order. (2) A [RO] may have effect (a) for a period specified in the order, or (b) until further order.

S 360. **[RO]: availability** (1) This [s] applies where a court is dealing with an offender for an offence. (2) The court may make a [RO] under this [s] against the offender for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which (a) amounts to harassment, or (b) will cause a fear of violence. (3) But the court may make a [RO] under this [s] only if it does so in addition to dealing with the offender for the offence.

S 361**. Procedure for varying or discharging [RO]** (1) Where a person is subject to a [RO] (a) that person, (b) the prosecution, or (c) any other person mentioned in the order, may apply to the court which made the order for it to be varied or discharged by a further order. (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under [ss] (1).

S 362. **Evidence in proceedings relating to [ROs]** (1) This [s] applies to (a) proceedings under [s] 360 for the making of a [RO]; (b) proceedings under [s] 361 or 363(6) for the variation or discharge of a [RO]. (2) In any such proceedings, both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under [s] 3 of the Protection from Harassment Act 1997 (*civil remedy*).

S 363**. Offence of breaching [RO]** (1) It is an offence for a person who is subject to a restraining order without reasonable excuse to do anything prohibited by the [RO]. (2) A person guilty of an offence under this [s] is liable (a) on [SC] to imprisonment for a term not exceeding 6 months, or a fine, or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both. (3) [ss] (1) does not apply to conduct of a person on a particular occasion if the [SS] certifies that, in the opinion of the [SS], anything done by that person on that occasion related to (a) national security, (b) the economic well-being of the [UK], or (c) the prevention or detection of serious crime, and was done on behalf of the Crown. (4) A certificate under [ss] (3) is conclusive evidence that [ss] (1) does not apply to conduct of that person on that occasion. (5) A document purporting to be a certificate under [ss] (3) is to be received in evidence and, unless the contrary is proved, to be treated as being such a certificate. (6) A court dealing with a person for an offence under this [s] may vary or discharge the restraining order by a further order.

S 364. **[ROs]: meaning of "conduct" and "harassment"** For the purposes of this Chapter "*conduct*" includes speech; *"harassment*", in relation to a person, includes (a) alarming the person, or (b) causing the person distress.

Domestic Abuse Act 2021

S 71. **Consent to serious harm for sexual gratification not a defence.** (1) This [s] applies for the purposes of determining whether a person ("*D*") who inflicts serious harm on another person ("*V"*) is guilty of a relevant offence. (2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification (but see [ss] (4). (3) In this [s] "*relevant offence*" means an offence under [s] 18, 20 or 47 of the [OPA] 1861 ("*the 1861 Act*"); "*serious harm*" means (a) [GBH], within the meaning of [s] 18 of the 1861 Act, (b) wounding, within the meaning of that [s], or (c) [ABH], within the meaning of [s] 47 of the 1861 Act. (4) [ss] (2) does not apply in the case of an offence under [s] 20 or 47 of the 1861 Act where (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection ('*STI'*) in the course of sexual activity, and (b) V consented to the sexual activity in the knowledge or belief that D had the [STI]. (5) For the purposes of this [s] it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person. (6) Nothing in this [s] affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

S 72. **Offences against the person committed outside the UK: [E&W]** (1) If (a) a person who is a [UK] national or is habitually resident in [E&W] does an act in a country outside the [UK], (b) the act constitutes an offence under the law in force in that country, and (c) the act, if done in [E&W], would constitute an offence to which this [ss] applies, the person is guilty in [E&W] of that offence. (2) The offences to which [ss] (1) applies are (a) murder; (b) manslaughter; (c) an offence under [s] 18, 20 or 47 of the [OPA]1861 (*offences relating to bodily harm or injury*); (d) an offence under [s] 23 or 24 of that Act (*administering poison*); (e) an offence under [s] 1 of the Infant Life (Preservation) Act 1929 (*child destruction*). (3) [SS] (1) does not apply where a person would, in the absence of that [ss], be guilty of an offence of murder or manslaughter

under the law of [E&W]. (4) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of [ss] (1)(b) however it is described in that law. (5) The condition in [ss] (1)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met, (b) showing the grounds for that opinion, and (c) requiring the prosecution to prove that it is met. (6) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under [ss](5). (7) In the Crown Court the question whether the condition is met is to be decided by the judge alone. (8) In this [s] "*act*" includes a failure to act; "*country*" includes territory; "*[UK] national*" means an individual who is (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, (b) a person who under the British Nationality Act 1981 is a British subject, or (c) a British protected person within the meaning of that Act. S 73**. Offences against the person committed outside the UK: [NI]** ***(not printed)***.

Protection from Sex Based Harassment in Public Act 2023

S 1. After [s] 4A of the Public Order Act 1986 insert "4B. *Intentional harassment, alarm or distress on account of sex*. (1) A person (A) is guilty of an offence under this [s] if (a) A commits an offence under [s] 4A (*intentional harassment, alarm or distress*), and (b) A carried out the conduct referred to in [s] 4A(1) because of the relevant person's sex (*or presumed sex*). (2) In [ss] (1) "*presumed"* means presumed by A; "*the relevant person*" means the person to whom A intended to cause harassment, alarm or distress. (3) For the purposes of [ss] (1)(b) it does not matter whether or not (a) A also carried out the conduct referred to in [s] 4A(1) because of any other factor not mentioned in [ss] (1)(b), or (b) A carried out the conduct referred to in [s] 4A(1) for the purposes of sexual gratification. (4) A person guilty of an offence under this [s] is liable (a) on [SC], to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both. (5) If, on the trial on indictment of a person charged with an offence under this [s], the jury find the person not guilty of the offence charged, they may find the person guilty of the offence in [s] 4A."

S 2. **Guidance**. (1) The [SS] must issue guidance to (a) [CPOs], (b) the [CC] of the [BTP] Force, (c) the [CC] of the [MOD] Police, and (d) the [CC] of the [CNC], about the offence in [s] 4B of the Public Order Act 1986 (*intentional harassment, alarm or distress on account of sex*). (2) The guidance must in particular include guidance about the reasonable conduct defence in [s] 4A(3)(b) of that Act. (3) The [SS] may revise guidance issued under this [s]. (4) The [SS] must arrange for guidance issued under this [s] to be published. (5) A [CPO] or a [CC] mentioned in [ss] (1) must have regard to guidance issued under this [s].

Public Order Crimes 2023

S 9. **Offence of interference with access to or provision of abortion services [AS]**. (1) It is an offence for a person who is within a [SAZ] to do an act with the intent of, or reckless as to whether it has the effect of (a) influencing any person's decision to access, provide or facilitate the provision of [AS] at an abortion clinic, (b) obstructing or impeding any person accessing, providing, or facilitating the provision of [AS] at an abortion clinic, or (c) causing harassment, alarm or distress to any person in connection with a decision to access, provide, or facilitate the provision of [AS] at an abortion clinic, where the person mentioned in [para] (a), (b) or (c) is within the [SAZ] for the abortion clinic. (2) A "*[SAZ]*" means an area which is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic and is (a) on or adjacent to a public highway or public right of way, (b) in an open space to which the public has access, (c) within the curtilage of an abortion clinic, or building or site which contains an abortion clinic, or (d) in any location that is visible from a public highway, public right of way, open space to which the public have access, or the curtilage of an abortion clinic. (3) No offence is committed under [ss 1] by (a) a person inside a dwelling where the person affected is also in that or another dwelling, or (b) a person inside a building or site used as a place of worship where the person affected is also in that building or site. (4) A person guilty of an offence under [ss (1)] is liable on [SC] to a fine. (5) Nothing in this [s] applies to (a) anything done in the course of providing, or facilitating the provision of, [AS] in an abortion clinic, (b) anything done in the course of providing medical care within a regulated healthcare facility, (c) any person or persons accompanying, with consent, a person or persons accessing, providing or facilitating the provision of, or attempting to access, provide or facilitate the provision of, [AS], or (d) the operation of a camera if its coverage of persons accessing or attempting to access an abortion clinic is incidental. (6) In this [s] "*abortion clinic*" means (a) a place approved for the purposes of [s] 1 of the Abortion Act 1967 by the [SS] under [ss] (3) of that [s], or (b) a hospital identified in a notification to the Chief Medical Officer under [s] 2(1) of the Abortion Act 1967 in the current or previous calendar year, and published identifying it as such, where "*current"* or "*previous*" are references to the time at which an alleged offence under [ss] (1) of this [s] takes place; "*[AS]*" means any treatment for the termination of pregnancy; "*dwelling*" has the same meaning as in [s 1] of this Act (*offence of locking on*).

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