



1 November 1996

PRIME MINISTER

## NORTHERN IRELAND ARMS DECOMMISSIONING BILL

You and NI colleagues will wish to know where work on the Northern Ireland Arms Decommissioning Bill now stands. This minute also responds to your request for the issues involved in extending the draft Bill to the rest of the UK to be looked at again.

The Bill's Extent

As currently drafted, the Bill makes provision for a Northern Ireland decommissioning scheme, though its effect will be UK-wide, in the sense that prosecutions cannot be instituted elsewhere in the UK for offences covered by a Northern Ireland amnesty; the same is true of the limitations on evidential use and forensic testing contained in the Bill.

At the request of the Lord President in May the NIO consulted interested Departments (the Home and Scottish Offices, the Law Officers' Department and the Lord Advocate's Department). The conclusion reached then was that, while weapons caches in GB would have to be dealt with at some stage, this Bill should not be extended to make provision for decommissioning in the rest of the UK, for the reasons given below.

It was, however, agreed that an undertaking should be given during the Bill's passage that the issue of terrorist arms in GB would be raised during the decommissioning negotiations, and that the Government would examine carefully any proposals made by other parties to the negotiations; and that in the light of those discussions, and of wider developments in Northern Ireland, the Government would consider putting appropriate arrangements in place to decommission terrorist arms held in Great Britain.



That decision was taken for a number of practical and handling reasons, including the fact that a relatively small proportion of terrorist arms in the UK are concealed in GB, and because we recognised that to refer to weapons held anywhere in the UK would fundamentally change the potential effect of the Bill and could have implications for our ability to secure its passage. We also recognised that the provisions of the Bill could pose significant operational and presentational difficulties in GB, partly because of the difficulty of distinguishing between terrorist and non-terrorist arms. Armed crime in Northern Ireland is inextricably linked with, and primarily related to, terrorism. That is not, of course, the case in GB.

I have, as you requested, reviewed the position in consultation with Michael Howard, Michael Forsyth, Nick Lyle and Donald Mackay (both Nick and Donald had provided advice during the earlier exercise). Our concluded view remains that we should not try to deal with the GB dimension in this Bill, for the reasons set out in detail at Annex A. Despite Unionist concerns, our judgement remains that we should treat the GB aspects as a separate exercise, and in slower time if necessary. We do, however, accept that this position will need to be well and fully justified during the passage of the Bill. I have therefore asked my officials, working with those in relevant Departments, to look again at the defensive lines agreed earlier in the year (attached at Annex B, for information).

#### Publication of the Bill

Prior to the summer recess colleagues agreed that we should aim, with the Irish, to publish co-ordinated legislative proposals for consideration by the parties. That agreement was reaffirmed in September, when it looked likely that we would wish to make the Bills public as an earnest of our intent to address the decommissioning issue. We did not in the event do so and matters have moved on. Given our public commitment to the Bill's early introduction, it is not now our intention to publish the Bill for consideration by the parties.





I propose instead to move to introduce the Bill as quickly as possible and to enact, all other things being equal, before Christmas. There is considerable pressure for early enactment, particularly from the Unionists. They wish to ensure that the decommissioning issue, and talks more generally, are not impeded by the lack of a statutory foundation. We and the Irish recognise the force of this argument. At present, we understand that the Irish have also come to the view that they too should introduce their legislation and enact before Christmas, recognising the hard reality that talks are likely to stall if they fail to do so. I believe there is much to be gained by taking the two Bills through in parallel.

#### The Bill

Subject to agreement on the handling of the GB dimension, the Bill is now ready for introduction: its main provisions are set out at Annex C, together with copies of the Bill. Because time is pressing, I intend to put the draft Bill to LG for consideration at their next meeting, on 6 November, with a view to introducing it as soon as practicable thereafter. As NI has already endorsed the broad approach to which the Bill gives effect, I hope this causes colleagues no difficulty. If there are any comments, I should be glad to have these as a matter of urgency.

#### Conclusion

I should be grateful for confirmation that you and NI colleagues are content with the approach I have outlined above, and with the terms of the draft Bill. I am copying this to NI colleagues and also to the Lord President, the Secretary of State for Scotland, the Lord Advocate and to Sir Robin Butler.

(Signed)

PM

## Northern Ireland Arms Decommissioning Bill: Consequences of Extending the Bill to GB

### Practical and Legal Consequences

1. As currently drafted, the Bill refers to weapons in Northern Ireland. It does not distinguish between terrorist and other illegal arms, ammunition and explosives. Nor does the Irish Bill. In Northern Ireland, the vast majority of illegal weapons are in the hands of terrorists, and armed crime and terrorism are inextricably linked. In the Republic of Ireland, the linkage between armed crime and terrorism is much less strong, but the greater proportion of illegal weapons is still in the hands of terrorists, rather than criminal elements. Taken together, terrorist arms holdings in Northern Ireland and the Republic comprise the bulk of terrorist arms holdings in the British Isles.
2. British and Irish officials considered whether it would be possible to limit the Bill's provisions to terrorist weaponry, but concluded that it would be difficult, and perhaps impossible, to do so. There is no statutory definition of "terrorist weapon" in UK or Irish law. It has not been possible to identify any practicable way of defining terrorist weapons and even if the difference between terrorist weapons and other illegal weapons was clear in theory, if a member of the public handed in a pistol to an independent Commission or other designated representative of the Government, claiming that it was a terrorist pistol in accordance with a decommissioning scheme, it might be impossible to prove that it was not. That person would benefit from the amnesty. The practical effect would be that the amnesty would, subject to such restrictions as may be imposed in the scheme, remain open to anyone wishing to decommission arms, ammunition and explosives.



3. Given the preponderance of terrorist arms in Northern Ireland and the Republic of Ireland, NIO and Irish Ministers judged that an amnesty for all illegal arms, ammunition and explosives in the island of Ireland, irrespective of their provenance, would be accepted by both Parliaments.

4. In GB, only a small proportion of illegal weapons are held by terrorists. Given the serious difficulties of differentiating between terrorist and other illegal weapons, the prime concern of the Home and Scottish Secretaries is that the public and the police in Great Britain would find such a wide amnesty, with its evidential and forensic testing restrictions, unacceptable. A decommissioning scheme covering Great Britain would be fundamentally different from previous firearms amnesties, such as the post-Dunblane amnesty in June this year, which have granted exemption only from unlawful possession offences. In previous amnesties police forces have been told that where it is believed a serious offence involving a surrendered gun has been committed, enquiries should be carried out in the normal way (including forensic examination of the weapon).

5. Consideration was also given to including restrictions in a decommissioning scheme which would have the effect of limiting the amnesty to terrorist organisations and, therefore, terrorist weapons. It might, for example, be possible to develop a system of codewords, or identify a number of trusted intermediaries, to be used by those in possession of terrorist arms when passing information to the Commission or to the Government's designated representatives, or when handing over arms.

6. The NIO, Home Office and Scottish Office saw considerable drawbacks to this approach and concluded that it would not provide a reliable means of differentiating between terrorist and non-terrorist weapons. Whilst in theory it would have the effect of limiting the breadth of the amnesty, in practice it might not do so. Systems of codewords are capable of subversion; the codewords might, deliberately or otherwise, be made known to non-terrorists (a

factor of particular importance in Scotland, where links between loyalist paramilitaries and armed criminals are relatively strong) or terrorist organisations might offer to decommission weapons on behalf of criminals, thus allowing non-terrorists to take advantage of the amnesty to rid themselves of "hot" weapons. In any event, even if this route were to offer a possible approach, during the passage of the Bill and, necessarily, in advance of negotiating the scheme it would not be possible to give Parliament an assurance as to the inclusion of such detailed arrangements in a scheme.

7. In addition, to impose such restrictions would increase the complexity of a decommissioning scheme and, by widening the number of relevant agencies, complicate the negotiation and development of a scheme. It might also have the effect of curtailing the use made of the scheme by some terrorists (particularly in the case of the Loyalists, where weapons are often held by individuals rather than a Quartermaster). Of necessity the Home Office, Scottish Office, Lord Advocate and ACPO would require to be consulted on or be parties to the negotiation of a decommissioning scheme.

#### Handling Consequences

8. To extend the legislation would have implications for the timescale for its introduction and passage.

9. Parliamentary Counsel remain of the view that extending the scope of the Bill would fundamentally change its nature. That would be likely to increase the difficulty of the Bill's passage; given the Home Secretary's view that the police and public would find such a wide amnesty as is envisaged unacceptable, the full support of the opposition or, indeed, Government backbenchers could not be assumed. To enact before Christmas, which the Unionists desire equally, would become extremely difficult.



## Defence of Current Position: Lines agreed in June 1996

- The main provisions of the Bill are as follows:
- The decommissioning Bill is specifically tailored to provide a firm foundation for arms decommissioning in Northern Ireland and to enable HMG to give effect to the Mitchell recommendations, which were specific to the Irish situation north and south. We do not believe that its particular provisions are appropriate to the very different circumstances of Great Britain, where the problem of illegal arms is of a quite different nature. Terrorist arms holdings in GB represent a very small, albeit deadly, proportion of illegal arms in England, Wales and Scotland.
  - This does not mean that terrorist arms in Great Britain will be ignored. This issue will be raised in the discussions on decommissioning in the Northern Ireland Talks process. Our aim is to remove all unauthorised weapons from the political equation.
  - In the light of those discussions, and taking into account the arrangements agreed in decommissioning in Northern Ireland and the particular considerations applicable to GB, the Government will take steps to put in place measures to facilitate the decommissioning of terrorist arms in GB.
  - It is too early to say what these measures might be: they could involve statutory or non-statutory measures, or a combination; this will depend on the precise circumstances in which decommissioning occurs. Parliament will be kept closely informed.

(v) A prohibition, except in certain circumstances, on the forensic testing of decommissioned articles.

Annex C

Provisions of the Northern Ireland Arms Decommissioning Bill

1. The main provisions of the Bill are as follows:

- (i) Definition of the term "decommissioning scheme".
- (ii) The time limit within which things can be handed in under a decommissioning scheme to take advantage of the amnesty under the Bill.
- (iii) An amnesty from prosecution in respect of certain (mainly possession-related) offences listed in the Schedule. The amnesty is available only to those acting in accordance with a decommissioning scheme; it is intended to protect those who commit offences through their participation in decommissioning, and is not a general amnesty for terrorist-related offences.
- (iv) A prohibition, except in certain circumstances, on the use in evidence in criminal proceedings of a decommissioned article or information derived from it or anything done in accordance with a decommissioning scheme.
- (v) A prohibition, except in certain circumstances, on the forensic testing of decommissioned articles.



RESTRICTED - POLICY

- (vi) Definition of an independent Commission to facilitate the decommissioning of firearms etc in Ireland both North and South and a power to confer appropriate legal status, immunities and privileges.

2. A copy of the Bill and its explanatory and financial memorandum is attached.

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill makes provision in relation to the decommissioning of firearms, ammunition and explosives in Northern Ireland, having regard to the guidelines on the modalities of decommissioning contained in the Report of the International Body (22 January, 1996).

Clause 1 defines the term "decommissioning scheme" for the purposes of the Bill, and provides for the proof of a scheme in legal proceedings.

Clause 2 requires that the period during which firearms, ammunition and explosives may be dealt with in accordance with a decommissioning scheme (the "amnesty period") must be identified in the scheme, and deals with its duration, conferring power on the Secretary of State to extend the maximum duration for periods of up to 12 months, until five years after Royal Assent.

Clause 3 requires a decommissioning scheme to make provision for one or more specified ways of dealing with firearms, ammunition and explosives, while allowing the scheme to make provision also for others.

Clause 4 provides for an amnesty from prosecution for those acting in accordance with a decommissioning scheme in respect of offences specified in the Schedule, and enables the Secretary of State by order to add or remove any offence.

Clause 5 provides that a decommissioned article, or information derived from it, as well as evidence of anything done and of any information obtained in accordance with a decommissioning scheme shall be inadmissible in criminal proceedings. The restriction does not apply to the admission of evidence on behalf of the accused, nor to proceedings for an offence alleged to have been committed with an article which had been decommissioned at the time the offence was committed.

Clause 6 prohibits certain forensic tests and procedures in relation to decommissioned articles. Tests and procedures for safety and verification purposes are excluded from the prohibition, as are tests and procedures in connection with the investigation of an offence alleged to have been committed after an article has been decommissioned.

Clause 7 makes provision about a Commission as mentioned in the report of the International Body and provides the Secretary of State with power by order to confer on the Commission the legal capacities of a body corporate, and on it, its members and members and members of their families who form part of their households various privileges and immunities. The clause also makes provision about requests to the Commission and its members, and about premises and staff.

# Northern Ireland Arms Decommissioning Bill

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*Clause 8* provides that the Secretary of State's expenses incurred in connection with a decommissioning scheme or in connection with the Commission shall be paid out of money provided by Parliament.

*Financial effects and effect on public service manpower*

The provisions of the Bill will have no significant new effect on public service manpower. The effect on public service expenditure will depend on the detailed decommissioning arrangements in due course put in place.

*Business compliance cost assessment*

There are no cost implications for business.

# Northern Ireland Arms Decommissioning Bill

## ARRANGEMENT OF CLAUSES

### Clause

1. Decommissioning scheme.
2. Duration of decommissioning scheme.
3. Methods of decommissioning.
4. Amnesty.
5. Evidence.
6. Testing decommissioned articles.
7. The Commission.
8. Expenses.
9. Interpretation.
10. Short title and saving.

### SCHEDULE:—

#### Offences Covered by the Amnesty.



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Make provision in relation to the decommissioning of firearms, ammunition and explosives in Northern Ireland; and for connected purposes. A.D. 1996.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) In this Act a “decommissioning scheme” is any scheme which—  
(a) is made by the Secretary of State for the purpose of facilitating the decommissioning of firearms, ammunition and explosives in Northern Ireland, and

Decommissioning scheme.

(b) includes provisions satisfying the requirements of sections 2 and 3 (whether or not it also includes other provisions).

(2) Section 2 of the Documentary Evidence Act 1868 (mode of proving certain documents) shall apply to a decommissioning scheme.

1868 c. 37.

2.—(1) A decommissioning scheme must identify a period during which firearms, ammunition and explosives may be dealt with in accordance with the scheme (“the amnesty period”).

Duration of decommissioning scheme.

(2) The amnesty period must end before—

- (a) the first anniversary of the day on which this Act is passed, or
- (b) such later day as the Secretary of State may by order from time to time appoint.

(3) A day appointed by an order under subsection (2)(b) must not be—

- (a) more than twelve months after the day on which the order is made, or
- (b) more than five years after the day on which this Act is passed.

(4) An order under subsection (2)(b) shall be made by statutory instrument; and no order shall be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.

Methods of  
decommissioning.

3.—(1) A decommissioning scheme must make provision for one or more of the following ways of dealing with firearms, ammunition and explosives (and may make provision for others)—

- (a) transfer to the Commission mentioned in section 7, or to a designated person, for destruction;
- (b) depositing for collection and destruction by the Commission or a designated person;
- (c) provision of information for the purpose of collection and destruction by the Commission or a designated person;
- (d) destruction by persons in unlawful possession.

(2) In subsection (1) "designated person" means a person designated by the Secretary of State or, in the case of firearms, ammunition or explosives transferred or collected in the Republic of Ireland, a person designated by the Minister for Justice of the Republic.

Amnesty.

4.—(1) No proceedings shall be brought for an offence listed in the Schedule to this Act in respect of anything done in accordance with a decommissioning scheme.

(2) The Secretary of State may by order add any offence or description of offence to, or remove any offence or description of offence from, the list in the Schedule to this Act.

(3) An order under subsection (2)—

(a) shall be made by statutory instrument, and

(b) may include such transitional provisions as appear to the Secretary of State to be expedient.

(4) No order shall be made under subsection (2) unless a draft has been laid before, and approved by resolution of, each House of Parliament.

Evidence.

5.—(1) A decommissioned article, or information derived from it, shall not be admissible in criminal proceedings.

(2) Evidence of anything done, and of any information obtained, in accordance with a decommissioning scheme shall not be admissible in criminal proceedings.

(3) Subsections (1) and (2) shall not apply to the admission of evidence adduced in criminal proceedings on behalf of the accused.

(4) Subsection (1) shall not apply to proceedings for an offence alleged to have been committed by the use of, or in relation to, something which was a decommissioned article at the time when the offence is alleged to have been committed.

Testing  
decommissioned  
articles.

6.—(1) A person who has received a decommissioned article shall not carry out, or cause or permit anyone else to carry out, a test or procedure in relation to the article the purpose of which is—

- (a) to discover information about anything done with or in relation to any decommissioned article,



- (b) to discover who has been in contact with, or near to, any decommissioned article,
- (c) to discover where any decommissioned article was at any time (including the conditions under which it was kept),
- (d) to discover when any decommissioned article was in contact with, or near to, a particular person or when it was in a particular place or kept under particular conditions,
- (e) to discover when or where any decommissioned article was made, or
- (f) to discover the composition of any decommissioned article.

(2) Subsection (1)(f) does not prohibit a test or procedure the purpose of which is—

- (a) to determine whether an article is, or contains, an explosive or ammunition,
- (b) to determine the quantity of explosive or ammunition present, or
- (c) to determine whether an article can safely be moved or otherwise dealt with.

(3) Subsection (1) does not prohibit a test or procedure the purpose of which is to discover information in relation to a decommissioned article where the information—

- (a) is sought for the purposes of the investigation of an offence alleged to have been committed at a time after the article became a decommissioned article, and
- (b) does not concern the treatment of the article in accordance with a decommissioning scheme.

7.—(1) In this section “the Commission” means an independent organisation established by agreement between Her Majesty’s Government in the United Kingdom and the Government of the Republic of Ireland to facilitate the decommissioning of firearms, ammunition and explosives in Northern Ireland and in the Republic of Ireland. The Commission.

(2) The Secretary of State may by order—

- (a) confer on the Commission the legal capacities of a body corporate;
- (b) confer on the Commission, in such cases, to such extent and with such modifications as the order may specify, any of the privileges and immunities set out in Part I of Schedule 1 to the International Organisations Act 1968;

- (c) confer on members and servants of the Commission and members of their families who form part of their households, in such cases, to such extent and with such modifications as the order may specify any of the privileges and immunities set out in Parts II, III and V of that Schedule;

- (d) make provision about the waiver of privileges and immunities.

In this subsection “servants of the Commission” includes agents of, and persons carrying out work for or giving advice to, the Commission.

(3) An order under subsection (2)—

- (a) may make different provision for different cases (including different provision for different persons);



- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State may—
- make payments to the Commission or to members of the Commission;
  - provide for the Commission such premises and facilities, and the services of such staff, as he thinks appropriate.
- (5) This section shall come into force on such day as the Secretary of State, after consulting the Minister for Justice of the Republic of Ireland, may by order made by statutory instrument appoint.
- (6) This section shall cease to have effect at the end of such day as the Secretary of State, after consulting the Minister for Justice of the Republic of Ireland, may by order made by statutory instrument appoint; and an order under this subsection may include such transitional provisions as appear to the Secretary of State to be expedient.

## Expenses.

8. Any expenses incurred by the Secretary of State in connection with a decommissioning scheme or under section 7(4) shall be paid out of money provided by Parliament.

## Interpretation.

9.—(1) In this Act—

“ammunition” means anything which is—

- ammunition within the meaning of the Firearms (Northern Ireland) Order 1981, or
- a component of such ammunition;

“decommissioned article” means—

- anything which has been transferred, deposited or collected in accordance with a decommissioning scheme,
- anything found on or in, or received with, something falling within paragraph (a), and
- a part of, or thing derived from, something falling within paragraph (a) or (b);

“destruction” includes making permanently inaccessible or permanently unusable;

“firearm” means anything which—

- is a firearm within the meaning of the Firearms (Northern Ireland) Order 1981,
- is an accessory to such a firearm,
- is a weapon designed or adapted for the discharge of any thing, or
- has the appearance of being one of the things described in paragraphs (a) to (c);

“explosive” means anything which is—

- an explosive within the meaning of the Explosives Act 1875, or

S.I. 1981/155  
(N.I. 2).

1875 c. 17.



(b) an explosive substance within the meaning of the Explosive Substances Act 1883.

(2) In this Act, references to things done in accordance with a decommissioning scheme include references to things done in accordance with arrangements provided for by a scheme.

10.—(1) This Act may be cited as the Northern Ireland Arms Decommissioning Act 1996. Short title and saving.

(2) Nothing in this Act shall prejudice any power or discretion exercisable apart from this Act in relation to the institution or conduct of criminal proceedings.

Section 4(1).

## SCHEDULE

## OFFENCES COVERED BY THE AMNESTY

*Explosives Act 1875*

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- 1875 c. 17. 1. An offence of contravening any provision of the Explosives Act 1875 or any instrument under that Act.

*Explosive Substances Act 1883*

- 1883 c. 3. 2. An offence under section 4 of the Explosive Substances Act 1883 (possession of explosive under suspicious circumstances, &c.). 10

*Criminal Law Act (Northern Ireland) 1967*

- 1967 c. 18 (N.I.). 3. An offence under section 5 of the Criminal Law Act (Northern Ireland) 1967 (concealing offences, &c.).

*Theft Act (Northern Ireland) 1969*

- 1969 c. 16 (N.I.). 4. An offence under section 1 or 21 of the Theft Act (Northern Ireland) 1969 (theft and handling stolen goods). 15

*Explosives Act (Northern Ireland) 1970*

- 1970 c. 10 (N.I.). 5. An offence under any provision of the Explosives Act (Northern Ireland) 1970.

*Health and Safety at Work (Northern Ireland) Order 1978*

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- S.I. 1978/1039 (N.I. 9). 6. An offence under any provision of the Health and Safety at Work (Northern Ireland) Order 1978.

*Customs and Excise Acts 1979*

- 1979 c. 2. 7. An offence under any provision of the Customs and Excise Acts 1979 (within the meaning of the Customs and Excise Management Act 1979). 25

*Firearms (Northern Ireland) Order 1981*

- S.I. 1981/155 (N.I. 2). 8. An offence under any of the following provisions of the Firearms (Northern Ireland) Order 1981:
- (a) article 3(1) (possession, &c. of firearm or ammunition not authorised by firearm certificate); 30
  - (b) article 4(1) and (2) (transactions with firearms and ammunition);
  - (c) article 6(1), (1A) and (4) (prohibited firearms and ammunition);
  - (d) article 7 (movement of firearms and ammunition);
  - (e) article 18(2), in so far as it concerns possession of firearms or imitation firearms at the time of being arrested; 35
  - (f) article 20(1) (carrying firearms in a public place);
  - (g) article 21 (trespassing with firearms);
  - (h) article 22(5) and (7) (possession of firearms by person previously convicted of crime, &c.);
  - (i) article 23 (possession of firearms and ammunition in suspicious circumstances); 40



- (j) article 26 (acquisition and possession of firearms and ammunition by persons under 18);
- (k) article 43 (failure to comply with requirements relating to transactions in firearms, &c.).

*Prevention of Terrorism (Temporary Provisions) Act 1989*

9. An offence under either of the following provisions of the Prevention of Terrorism (Temporary Provisions) Act 1989— 1989 c. 4.

- (a) section 10(1)(b) (making property available for the benefit of a proscribed organisation, &c.);
- (b) section 18 (failure to disclose information about acts of terrorism).

*Northern Ireland (Emergency Provisions) Act 1996*

10. An offence under any of the following provisions of the Northern Ireland (Emergency Provisions) Act 1996— 1996 c. 22.

- (a) section 29 (directing terrorist organisation);
- (b) section 30(1)(c) (inviting persons to carry out orders on behalf of a proscribed organisation, &c.);
- (c) section 30(1)(d)(ii) or (iii) (meetings);
- (d) section 31 (display of support in public for proscribed organisation);
- (e) section 32 (possession of items intended for terrorist purposes);
- (f) section 35 (wearing of hoods, &c. in public place).

*Inchoate offences*

11. The offence of aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Schedule.

12. The offence of attempting or conspiring to commit an offence specified in this Schedule.