

Appendix A - Draft Criminal Law (Intoxication) Bill and Notes

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Make provision, subject to certain exceptions, about the effect of intoxication on criminal liability.

BE 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:—

PART 1

VOLUNTARY AND INVOLUNTARY INTOXICATION: BASIC RULES

1 Application and interpretation of Part 1

- (1) This Part applies where—
 - (a) there are proceedings against a person (“D”) for an offence,
 - (b) D’s liability for it requires proof of a fault element which depends upon D’s state of mind,
 - (c) it is alleged that the fault element was present at any material time, and
 - (d) at that time D was intoxicated.
- (2) In subsection (1), references to a fault element include any fault element which the prosecution must prove (regardless of how the offence is defined), except one which arises when either of the following issues is raised—
 - (a) whether or not D is entitled to rely on the common law defence of self-defence,
 - (b) whether or not D used reasonable force for the purposes of section 3(1) of the Criminal Law Act 1967 (c. 58) (use of force in making arrest etc.).
- (3) In this Part—
 - (a) “D” is the person referred to in subsection (1),
 - (b) “the allegation” means the allegation referred to in subsection (1)(c),
 - (c) references to acts, and related expressions, include omissions and similarly related expressions.

2 Involuntary intoxication

If D's intoxication was involuntary, evidence of it may be taken into account in determining whether the allegation has been proved.

3 Voluntary intoxication: liability of perpetrator

- (1) This section applies unless the proceedings against D are for aiding, abetting, counselling or procuring the commission of an offence (for which see section 4).
- (2) This section applies only if D's intoxication was voluntary.
- (3) Where this section applies, the general rule is that in determining whether the allegation has been proved, D is to be treated as having been aware at the material time of anything which D would then have been aware of but for the intoxication.
- (4) There are five cases in which the general rule does not apply: in those cases, evidence of D's intoxication may be taken into account in determining whether the allegation has been proved.
- (5) The five cases are that the allegation is, in substance, that at the material time –
 - (a) D intended a particular result (but this does not include merely intending to do the acts which constitute the conduct element of the offence),
 - (b) D had any particular knowledge as to something (but this does not include knowledge as to a risk),
 - (c) D had a particular belief, amounting to certainty or near-certainty, that something was then, had been, or would in future be, the case,
 - (d) D acted fraudulently or dishonestly,
 - (e) D was reckless for the purposes of subsection (5)(a)(ii) or (b)(ii) of section 47 of the Serious Crime Act 2007 (c. 27) (concerning proof for the purposes of that section that an act is one which, if done by another person, would amount to the commission of an offence by that other person).
- (6) Paragraph (e) of subsection (5) applies only if liability for the offence mentioned in that paragraph would (if there were proceedings against the other person for it) require proof of an allegation against that person which is of any kind mentioned in paragraphs (a) to (d) of that subsection.

4 Voluntary intoxication: secondary liability

- (1) This section applies if the proceedings against D are (whatever expression is used) for aiding, abetting, counselling or procuring the commission of an offence by another person (“P”).
- (2) This section applies only if D’s intoxication was voluntary.
- (3) Where this section applies, the general rule is that in determining whether the allegation has been proved, D is to be treated as having been aware at the material time of anything which D would then have been aware of but for the intoxication.
- (4) There is one case in which the general rule does not apply: in that case, evidence of D’s intoxication may be taken into account in determining whether the allegation has been proved.
- (5) The one case is that liability for the offence which D is said to have aided, abetted (etc.) would (if there were proceedings against P for it) require proof of an allegation against P which is of any kind mentioned in section 3(5)(a) to (d).
- (6) For the purposes of subsection (3) it does not matter –
 - (a) whether the offence which D is said to have aided, abetted (etc.) has a fault element at all, or
 - (b) if it does, what sort of fault element it is.

PART 2

OTHER PROVISIONS

5 Mistaken beliefs and intoxication

- (1) This section applies if –
 - (a) there are proceedings against a person (“D”) for any offence,
 - (b) D was at any material time intoxicated, and
 - (c) by way of defence, or in support of a defence, D relies on having at that time held a particular belief as to any fact.
- (2) In this section, “defence” –
 - (a) does not include anything which, if raised as an issue, imposes the burden of proving a fault element falling within section 1(1) on the prosecution, but
 - (b) does include the defences referred to in section 1(2)(a) and (b).
- (3) In determining D’s liability for the offence –
 - (a) if D’s intoxication was involuntary, D’s actual belief, whether mistaken or not, is to be taken into account, but
 - (b) if D’s intoxication was voluntary, D’s actual belief is to be taken into account only if D would have held the same belief if not intoxicated.
- (4) If evidence is adduced which is sufficient to raise an issue to the effect that D would have held the same belief if not intoxicated, it is to be taken that D would have held that belief unless the prosecution proves beyond reasonable doubt that D would not.
- (5) Any enactment or provision of subordinate legislation (whatever its terms) by virtue of which the holding of a particular belief provides, or supports, a defence to a criminal charge has effect subject to this section.

6 Meaning of voluntary and involuntary intoxication

- (1) For the purposes of this Act, an intoxicated person (“D”) is involuntarily intoxicated if D’s intoxication was entirely, or almost entirely, involuntary.
- (2) Otherwise, for the purposes of this Act D is voluntarily intoxicated.
- (3) If D’s intoxication results from taking an intoxicant because of an addiction, it counts as voluntary.
- (4) Intoxication resulting from either of the following is an example of involuntary intoxication—
 - (a) administration of an intoxicant to D without D’s consent,
 - (b) taking an intoxicant under duress.
- (5) If D’s intoxication results from either of the following, it counts as involuntary—
 - (a) taking an intoxicant which D reasonably believed was not an intoxicant,
 - (b) taking an intoxicant for a proper medical purpose.
- (6) D is to be regarded as taking an intoxicant for a “proper medical purpose” only if it was a drug or medicine properly authorised or licensed by an appropriate authority and—
 - (a) D took it in accordance with the advice of a suitably qualified person, or
 - (b) D took it in accordance with the instructions accompanying it, or
 - (c) if D took it otherwise than as mentioned in paragraph (a) or (b), it was reasonable for D to have done so.

7 Presumptions and proof

- (1) In this section, “D” means the person referred to in section 1(1) or 5(1).
- (2) For the purposes of this Act it is to be taken that D was not intoxicated at the material time, unless –
 - (a) the prosecution proves the contrary beyond reasonable doubt, or
 - (b) D adduces evidence which is sufficient to raise an issue to the contrary.
- (3) If D adduces evidence as mentioned in subsection (2)(b), it is to be taken for the purposes of this Act that D was intoxicated at the material time, unless the prosecution proves beyond reasonable doubt that D was not.
- (4) If for the purposes of this Act D was (or is to be taken to have been) intoxicated at the material time, then it is to be taken for those purposes that D’s intoxication was voluntary, unless D shows the contrary on the balance of probabilities.

8 Consequential amendments and repeal

- (1) In section 5 of the Criminal Damage Act 1971 (c. 48) (meaning of “without lawful excuse”), in subsection (3), at the end add “, but this is subject to section 5 of the Criminal Law (Intoxication) Act 2009 (which makes provision about mistaken beliefs and intoxication)”.
- (2) In section 6 of the Public Order Act 1986 (c. 64) (fault element of certain offences relating to public order), subsections (5) and (6) (which deal with the effects of intoxication) are repealed.
- (3) In section 76 of the Criminal Justice and Immigration Act 2008 (c. 4) (reasonable force for purposes of self-defence etc.), for subsection (5) substitute –
 - “(5) But –
 - (a) in relation to England and Wales, subsection (4)(b) is subject to section 5 of the Criminal Law (Intoxication) Act 2009 (which makes provision about mistaken beliefs and intoxication);
 - (b) in relation to Northern Ireland, subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.”

9 Citation, commencement, application and extent

- (1) This Act may be cited as the Criminal Law (Intoxication) Act 2009.
- (2) This Act comes into force at the end of the period of 2 months beginning with the day on which it is passed.
- (3) Nothing in this Act applies in relation to any offence committed before the Act comes into force.
- (4) Nothing in this Act affects the law relating to an issue of automatism or insanity.
- (5) Section 8(3), and this section, extend to England and Wales and Northern Ireland.
- (6) Subject to that, this Act extends to England and Wales only.