

EXPLANATORY MEMORANDUM TO

The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2011

2011 No. 428

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 35(4) of the Criminal Justice Act 1988 (“the 1988 Act”) and is subject to negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule will ensure that sentences imposed for (i) the commission of certain sexual offences introduced by the Sexual Offences (Northern Ireland) Order 2008 (“the 2008 Order”), (ii) attempting to commit such offences, and (iii) encouraging or assisting the commission of such offences, can be referred to the Court of Appeal by the Director of Public Prosecutions for Northern Ireland (“the DPP”) if the sentence passed appears unduly lenient.
- 2.2. The Statutory Rule also revokes certain provisions from the Criminal Justice Act 1998 (Reviews of Sentencing) Order (Northern Ireland) 1996 (“the 1996 Order”), which were re-enacted as part of a consolidation exercise in the Criminal Justice Act 1998 (Reviews of Sentencing) Order 2006 (“the 2006 Order”) but remained listed in the 1996 Order.

3. Background

- 3.1. Part 4 of the 1988 Act provided the Attorney General with a power to refer cases to the Court of Appeal where it appeared to the Attorney that the sentences passed by the Crown Court were unduly lenient. The power, which was extended to Northern Ireland by the 1988 Act – and which has subsequently been devolved, in Northern Ireland, to the DPP - can be exercised in respect of all cases which can be tried only on indictment, and to certain other cases which can be tried either on indictment or summarily.
- 3.2. This second group, the ‘either way’ offences, are brought within the scope of Part 4 of the 1988 Act by Orders made under section 35(4) of the 1988 Act. The 1996 Order extends to Northern Ireland and the 2006 Order extends to England and Wales and Northern Ireland. These Orders set out a list of offences in respect of which sentences can be referred by the Attorney in England and Wales, and by the DPP in Northern Ireland.
- 3.3. The 2006 Order specifically added a number of new sex offences carried by the Sexual Offences Act 2003 (“the 2003 Act”) to the list of either way offences that were capable of being referred. However, since then, the 2008 Order provided Northern Ireland with a new body of law on sexual offences to replace existing offences, including those offences in the 2003 Act.

- 3.4. A consequential amendment should have been made to add the new offences in the 2008 Order, which replaced existing referable offences, to the list of offences in respect of which sentences are referable in Northern Ireland. This amendment was not made at the time and, consequently, provisions now need to be amended to bring the law back into line with what it was prior to the 2008 Order. The relevant 2008 Order offences are listed in paragraph 1 of the Schedule to this Order.
- 3.5. This Order also enables the referral of sentences passed on a person for: (i) attempting to commit any of the offences listed in paragraph 1 of the Schedule to this Order (bringing the law back into line with paragraph 4 of the Schedule to the 2006 Order (as it deals with attempts)); and (ii) committing an offence under Part 2 of the Serious Crime Act 2007 (“the 2007 Act”) (encouraging or assisting crime) in relation to which an offence in paragraph 1 of the Schedule to this Order is the offence (or one of the offences) which the person intended or believed would be committed (although this is different to paragraph 4 of the Schedule to the 2006 Order (as it deals with inciting the commission of an offence) it reflects another change in the law that has taken place since the 2006 Order was made, namely that the common law offence of incitement has been abolished with replacement offences enacted in Part 2 of the 2007 Act).

4. Consultation

- 4.1. This is a necessary amendment to the law to ensure that sentences for certain sexual offences continue to be referable by the DPP in the event of unduly lenient sentences. The Statutory Rule does not represent a change in policy. Rather, it re-establishes the law as it was and as such, no consultation was considered necessary.

5. Equality Impact

- 5.1. There are no issues of equality to be considered

6. Regulatory Impact

- 6.1. There are no issues to be considered.

7. Financial Implications

- 7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The order will re-establish the law as it was and there are no s.24 considerations.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. This order will re-establish a similar position with the law in England and Wales, in that the list of sexual offences in respect of which sentences are referable in Northern Ireland will again be equivalent to those in England and Wales.

11. Additional Information

11.1. Not applicable