

## **EXPLANATORY MEMORANDUM TO**

### **The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2016**

**2016 No. 58**

#### **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 in the Crown Court for the following 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 to him to be unduly lenient.
  - (i) an offence under section 20 of the Offences Against the Person Act 1861 (inflicting bodily injury, with or without weapon);
  - (ii) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children);
  - (iii) an offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (possession of indecent photograph of child);
  - (iv) an offence under Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (prohibition on unauthorised or harmful deposit, treatment or disposal, etc., of waste);
  - (v) an offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour);
  - (vi) an offence under section 4 of the Welfare of Animals Act (Northern Ireland) 2011 (unnecessary suffering);
  - (vii) an offence under section 8(1) and 8(2) of the Welfare of Animals Act (Northern Ireland) 2011 (fighting etc).

#### **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 (“the ‘either way’ offences”).

- 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. This Order extends the range of offences in respect of which that power may be exercised by the DPP in Northern Ireland to include offences tried in the Crown Court in relation to bodily injury with or without a weapon; indecent images of children; unauthorised or harmful deposit or disposal of waste; offences of slavery, servitude and forced or compulsory labour; and animal cruelty offences of causing unnecessary suffering and causing / attending or other involvement in an animal fight.
- 3.3. This Order also brings within the scope of Part 4 of the 1988 Act the related inchoate offences of attempting, encouraging or assisting the commission of any of the new offences listed in paragraph 2.

#### **4. Consultation**

- 4.1. The Department of Justice conducted a public consultation exercise to consider the current legislation that provides for unduly lenient sentences to be reconsidered, and to assess what improvements, if any, should be made. The consultation document can be viewed at: <https://www.dojni.gov.uk/sites/default/files/consultations/doj/the-law-on-unduly-lenient-sentences-a-consultation-paper-february-2015.pdf>
- 4.2. The consultation was launched by the Minister of Justice, David Ford MLA, on 9 February 2015 and closed on 15 May 2015. The document set out 6 issues for consideration including: the continuing need for reviews of sentencing law; what form such a scheme should take; whether restructuring was required; whether there should be a case filtering system; what scope the scheme should have; what case timetables there should be.
- 4.3. A total of thirteen responses were received, the responses received and the Department's comments on them are set out in ‘The Law on Unduly Lenient Sentences: Report on a Department of Justice Consultation’ published on the Department of Justice Website. The document can be viewed at: <https://www.dojni.gov.uk/sites/default/files/consultations/doj/consultation-report-the-law-on-unduly-sentences.pdf>

#### **5. Equality Impact**

- 5.1. No equality issues arise.

#### **6. Regulatory Impact**

- 6.1. No regulatory issues arise.

#### **7. Financial Implications**

- 7.1. There are no significant financial implications.

**8. Section 24 of the Northern Ireland Act 1998**

8.1. No s.24 issues arise.

**9. EU Implications**

9.1. There are no EU implications.

**10. Parity or Replicatory Measure**

10.1. Not applicable.

**11. Additional Information**

11.1. Not applicable.