
STATUTORY INSTRUMENTS

2019 No. 1397

CRIMINAL LAW, ENGLAND AND WALES

The Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2019

Made - - - - 22nd October 2019
Laid before Parliament 29th October 2019
Coming into force in accordance with article 1(1)

The Secretary of State makes the following Order in exercise of the power conferred by section 35(4) of the Criminal Justice Act 1988(1).

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2019 and comes into force on the twenty-first day after the day on which it is laid before Parliament.

(2) This Order extends to England and Wales.

Amendment of the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006

2.—(1) Schedule 1 to the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (descriptions of cases to which Part IV of the Criminal Justice Act 1988 is to apply)(2) is amended as follows.

(2) In paragraph 2—

(a) after sub-paragraph (g) insert—

“(ga) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children)(3);”;

(b) after sub-paragraph (h) insert—

(1) 1988 c. 33; section 35(4) was amended by paragraph 34(b) of Schedule 9 to the Criminal Justice and Public Order Act 1994 c. 33.
(2) S.I. 2006/1116, amended by S.I. 2012/1833, 2013/862, 2014/1651, 2015/800, 2015/1472, 2017/751; there are other amending instruments but none is relevant.
(3) 1978 c. 37. Section 1 was amended by the section 139 of, and paragraph 24 of Schedule 6 to, the Sexual Offences Act 2003 (c. 42); section 84(2), and section 168(3) of and Schedule 11 of the Criminal Justice and Public Order Act 1994 (c. 33), and section 160(4) of the Criminal Justice Act 1988.

- “(ha) an offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of child)(4);
- (hb) an offence under section 4 (putting people in fear of violence) or section 4A (stalking involving fear of violence or serious alarm or distress) of the Protection from Harassment Act 1997(5);”;
- (c) in sub-paragraph (i) for “to” substitute “, 30, 31(a), 31(b) and”;
- (d) after sub-paragraph (k) insert—
 - “(ka) an offence under section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship)(6)
- (3) In paragraph 3—
 - (a) after sub-paragraph (j) insert—
 - “(ja) section 16 (abuse of position of trust: sexual activity with a child);
 - (jb) section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity);
 - (jc) section 18 (abuse of position of trust: sexual activity in the presence of a child);
 - (jd) section 19 (abuse of position of trust: causing a child to watch a sexual act);”;
 - (b) after sub-paragraph (k) insert—
 - “(ka) section 26 (inciting a child family member to engage in sexual activity);
 - (kb) section 30 (sexual activity with a person with a mental disorder impeding choice);
 - (kc) section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity);
 - (kd) section 32 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice);
 - (ke) section 33 (causing a person, with a mental disorder impeding choice, to watch a sexual act);”.
- (4) In paragraph 4(2)—
 - (a) for “(h)” substitute “(hb)”;
 - (b) for “(j) or (k)” substitute “(j), (k), (ka) or (l)”.

22nd October 2019

Robert Buckland
Secretary of State for Justice
Ministry of Justice

(4) Section 160 was amended by the section 148(1) of, and paragraphs 22 and 24 of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c.4), and section 84(4), section 86(1), section 168(3), (4) and schedule 11 of the Criminal Justice and Public Order Act 1994.

(5) 1997 c.40. Section 4 was amended by section 175(1) of the Policing and Crime Act 2017 (c.3), section 115(1) of, and paragraph 143(1), (3) of Part 11 of Schedule 9 to, the Protection of Freedoms Act 2012 (c.9). Section 4A was inserted by section 111(2) of the Protection of Freedoms Act 2012, and section 175(1) of the Policing and Crime Act 2017.

(6) 2015 c.9.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 ([S.I. 2006/1116](#)) (“the 2006 Order”).

Part 4 of the Criminal Justice Act 1988 ([c.33](#)) (“the 1988 Act”) empowers the Attorney General, with leave, to refer a case to the Court of Appeal where the Attorney General considers that the sentence in that case was unduly lenient. Paragraphs 2 and 3 of Schedule 1 to the 2006 Order set out a list of offences, the sentences for which are capable of being referred to the Court of Appeal under Part 4 of the 1988 Act.

This Order adds to that list the following offences from the Sexual Offences Act 2003; the abuse of position of trust offences set out in sections 16 to 19, the offence of inciting a child family member to engage in sexual activity under section 26, and the offences against persons with a mental disorder impeding choice set out in sections 30 to 33. The Order also adds offences concerning indecent photographs of a child under section 160 of the Criminal Justice Act 1988 and section 1 of the Protection of Children Act 1978, offences of putting people in fear of violence and stalking involving fear of violence or serious alarm or distress under sections 4 and 4A of the Protection from Harassment Act 1997, and the offence of controlling or coercive behaviour in an intimate or family relationship under section 76 of the Serious Crime Act 2015.

This Order clarifies that the offences listed in paragraph (2)(i) do not include the offence under section 31(c) of the Crime and Disorder Act 1998.

This Order also amends paragraph 4 of Schedule 1 to the 2006 Order to ensure that the power to refer a case under Part 4 of the 1988 Act applies also to attempts, incitement and encouraging or assisting in relation to new offences added into paragraph 2, and to the modern slavery offence already set out in sub-paragraph 2(1).

No impact assessment has been produced for this instrument as no impact on the private or voluntary sectors is foreseen.