

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 1988 (REVIEWS OF SENTENCING)
ORDER 2006

2006 No. 1116

1. This explanatory memorandum has been prepared by the Office for Criminal Justice Reform for the Joint Committee on Statutory Instruments and is laid before Parliament by Command of Her Majesty. Ministerial responsibility for the criminal justice system is shared between the Home Secretary, Lord Chancellor and Attorney General. They are supported by the Office for Criminal Justice Reform (OCJR), which is the cross departmental team that supports all criminal justice agencies in working together to provide an improved service to the public. The legislation underlying the unduly lenient sentence scheme falls within OCJR's responsibilities so the OCJR has led on the preparation of this Order.

2. **Description**

2.1 The Attorney General has the power to refer certain Crown Court sentences to the Court of Appeal, where he considers them unduly lenient. This power is available only in respect of certain kinds of offence. The present Order adds to the list of offences which attract this power of referral. It also takes the opportunity to consolidate previous Orders of the same kind.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 The unduly lenient sentence scheme in Part 4 of the Criminal Justice Act 1988 empowers the Attorney General to refer specified Crown Court sentences to the Court of Appeal, with a view to their being increased. The power applies automatically to cases where the Crown Court imposes a sentence for an offence triable only on indictment (i.e. an offence so serious as to be triable *only* in the Crown Court, e.g. rape, murder). It also applies to sentences imposed by the Crown Court for certain either-way offences (offences which, depending on the circumstances, are capable of being tried either in the magistrates' court or in the Crown Court). However, the either-way offences in question must be specified for the purpose by Order.

4.2 The present Order is required to extend the range of either-way offences subject to the Scheme to include a number of offences in the Sexual Offences Act 2003. No Parliamentary undertakings relating to it have been given; nor is it one of a related group of Orders.

4.3 The present Order takes the opportunity to consolidate the previous four Orders of this kind, which are repealed.

5. Extent

5.1 This instrument applies to England, Wales and Northern Ireland.

5.2 Part 4 of the Criminal Justice Act 1988 and a number of the offences specified in the Order apply both to England and Wales and to Northern Ireland. The Northern Ireland authorities have been consulted as to the terms of the Order and also of this Explanatory Memorandum.

6. European Convention on Human Rights

6.1 The Order is subject to the negative resolution procedure and does not amend primary legislation; no statement is required regarding compatibility with the Convention rights.

7. Policy background

7.1 Part 4 of the Criminal Justice Act 1988 pursues three aims of public policy: first, it reassures victims of crime that there is recourse to a second opinion where the Crown Court's sentence is considered unfairly low; second, it encourages consistency of sentencing; and third it helps to reassure the general public that the most serious crimes are being dealt with effectively.

7.2 The main purpose of the present Order is to ensure that appropriate either-way sexual offences are subject to the scheme (as noted above, the most serious offences such as rape which are triable only on indictment are included automatically). Whilst sexual offences form a relatively small share of overall offending, they are capable of arousing strong emotions and often attract public interest.

7.3 In particular, the present Order updates the unduly lenient sentencing scheme to take account of the Sexual Offences Act 2003 ("the 2003 Act"). This Act fundamentally reformed the sexual offences legislation, creating a wide range of new sexual offences and repealing many old ones.

7.4 The either-way sexual offences in the 2003 Act which have been specified in the present Order fall into two groups. Firstly, some are similar to 'old' sexual offences which have previously been specified and are consolidated in this Order (see e.g. Schedule 1 paragraph 2 (d) and (e) to the present Order).

7.5 Although many of those 'old' sexual offences have been repealed, they remain subject to the unduly lenient sentence scheme because it is still possible for people to be charged with them for conduct which took place whilst they were in force. However, there are updated versions of those offences in the Sexual Offences Act 2003. This Order therefore adds to the scheme those offences under the Sexual Offences Act 2003 which correspond

broadly to 'old' sexual offences already covered by the Scheme. The offences in question are listed at Schedule 1 paragraph 3 (a), (c)-(f), (i), (k), (m), (o)-(p) and (t).

7.6 The second group of new sexual offences which this Order adds to the Scheme are those which are regarded as particularly suitable for inclusion on account of their nature and seriousness. An example is the "grooming" offence at section 15 of the 2003 Act. The offences in question are listed at Schedule 1 paragraph 3 (b), (g)-(h), (j), (l), (n) and (q)-(r). The Crown Prosecution Service has been consulted as to the proposed changes, and is content with them.

7.7 The second main purpose of the Order is to consolidate the previous four Orders of this kind. These Orders were made separately over the course of a decade. It is considered that practitioners and others would benefit from seeing all the specified either-way offences in the same place. All either-way offences subject to the scheme, therefore, have been listed together in the present Order.

7.8 The Order also brings up to date the application of the Scheme to Northern Ireland. The Scheme includes a number of offences which apply directly to Northern Ireland. Also, where there are Northern Ireland equivalents of offences specified for England and Wales, they are specified or consolidated in the present Order. The previous Orders are also repealed for Northern Ireland.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The Order will primarily affect the Law Officers' Department, the Crown Prosecution Service, HM Courts Service and the Prison Service. Any impact is being treated as de minimis in resource terms.

9. Contact

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