

## EXPLANATORY MEMORANDUM TO

### THE CRIMINAL JUSTICE ACT 1988 (REVIEWS OF SENTENCING) (AMENDMENT) ORDER 2017

2017 No. 751

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This Order specifies those either-way terrorism offences (listed within section 41 of the Counter-Terrorism Act 2008) in respect of which the Attorney General can refer a case to the Court of Appeal where he considers that the sentencing imposed by the Crown Court has been unduly lenient. The offences in section 41 of the Counter-Terrorism Act 2008 are those which trigger the terrorism notification requirements.

#### 3. Matters of special interest to Parliament

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

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 Part 4 of the Criminal Justice Act 1988 makes provision for the Attorney General to refer a case to the Court of Appeal where he considers that the sentencing has been unduly lenient (“the Unduly Lenient Sentence scheme”). The Unduly Lenient Sentence scheme applies to sentences passed by the Crown Court on a person for an indictable only offence or a specified either way offence. The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (“the 2006 Order”) specifies the categories of either way offences in respect of which such a reference may be made.
- 4.2 This Order amends the 2006 Order to include within the Unduly Lenient Sentence Scheme several serious terrorist offences set out in the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2006.

#### 5. Extent and Territorial Application

- 5.1 This extend of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

#### 6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The policy objective of Part 4 of the 1988 Act is to enable the Attorney General to refer to the Court of Appeal sentences imposed in the Crown Court in respect of serious offences (i.e. indictable only and specified either way offences) which he considers to be unduly lenient.
- 7.2 Part 4 of the 1988 does not currently cover the triable either-way offences which trigger the terrorism notification requirements under Part 4 of the Counter-Terrorism Act 2008. These are offences under the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001 and the Terrorism Act 2006 which are listed in section 41 of the Counter-Terrorism Act 2008. These offences cover a wide range of behaviour including but not limited to membership of and support for proscribed organisations, terrorist training, fundraising and handling money for terrorist purposes, and disseminating terrorist publications. Given the current level of threat from terrorism, the Government considers that these are serious offences, comparable with offences already listed in the 2006 Order.

### *Consolidation*

- 7.3 The present amendments are (for England and Wales) the fifth to be made to the 2006 Order, which itself consolidated previous changes. Whilst further amendments to the 2006 Order may be needed in the future, the current level of threat from terrorism and the recent terrorist attacks in London and Manchester, means that the Government wishes to bring these changes into the scope of the scheme as soon as possible.

## **8. Consultation outcome**

- 8.1 No public consultation was undertaken. The change was discussed within government, including with the Attorney General who operates the scheme, but as it is simply an extension of an established policy it was not considered that external consultation was needed.

## **9. Guidance**

- 9.1 No guidance is necessary as giving effect to the extended scheme is for the Attorney General.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is expected to be minimal as the number of these offences sentenced each year is under very small (under 70 in 2016).
- 10.3 An Impact Assessment has therefore not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The operation of the Unduly Lenient Sentence Scheme is kept under constant review by the Attorney General's Office. Statistics on numbers of cases referred under the scheme are published annually.

## **13. Contact**

- 13.1 Eleanor Nicholls at the Ministry of Justice (telephone: 07989 658850 or email: [eleanor.nicholls@justice.gov.uk](mailto:eleanor.nicholls@justice.gov.uk)) can answer any queries regarding the instrument.