

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 5: Protection of Children and Others

Commentary on Sections

Section 66: Child cruelty offence

259. This section makes four changes to the offence of child cruelty in section 1 of the 1933 Act.
260. *Subsection (2)* clarifies that the ill-treatment limb of the offence is engaged whether the ill-treatment is physical or non-physical in nature.
261. *Subsection (3)* makes it explicit on the face of section 1 what is already implicit, namely that the section 1 offence applies regardless of whether the suffering or injury caused to a child as a result of one or more acts of abuse or neglect was physical or psychological in nature. At the same time, the amendment made by this subsection removes the non-exhaustive list of the type of injury which the conduct must be likely to cause (on the grounds that “injury to or loss of sight, or hearing, or limb, or organ of the body” all self-evidently amount to physical harm) and the reference to “mental derangement” (on the grounds that the term is archaic and rendered redundant by the express reference to psychological suffering or injury).
262. *Subsection (4)* replaces the outdated reference in section 1(1) of the 1933 Act to “a misdemeanour” with a reference to “an offence”; section 1 of the Criminal Law Act 1967 abolished the then distinction between a felony (a term applied to more serious crimes) and a misdemeanour.
263. *Subsection (5)* amends subsection (2)(b) of section 1 of the 1933 Act, which deals with the suffocation of a child under three years when the child is in bed with a drunken person. The origin of subsection (2)(b) was concern about mothers becoming drunk on gin. Where it is proved that a child has died of suffocation whilst sharing a bed with a person who went to bed under the influence of drink, subsection (2)(b) deems that person to have neglected the child in a manner likely to cause injury to its health under subsection (1). Subsection (5) amends section 1(2)(b) of the 1933 Act to extend the circumstances under which the death of an infant under three occurs so that the deeming provision also applies where the infant was sleeping with a person aged 16 or over who was under the influence of a prohibited drug. New subsection (2B) of section 1 of the 1933 Act (as inserted by *subsection (6)*) defines a prohibited drug as a drug the possession of which immediately before taking it constituted an offence under section 5(2) of the Misuse of Drugs Act 1971 (“the 1971 Act”); that provision makes it an offence for a person to have a controlled drug in their possession, subject to any defence in section 28 of the 1971 Act or exceptions prescribed in regulations made under section 7 of that Act. The [Misuse of Drugs Regulations 2001 \(SI 2001/3998\)](#) provide, amongst other things, that a person may lawfully possess a controlled drug for administration for medical, dental or veterinary purposes in accordance with the

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directions of the prescriber (unless the drug was obtained by fraud). Accordingly, the modified deeming provision would not apply where a person had taken prescribed medication in accordance with his or her doctor's instructions.

264. Subsections (5) and (6) also amend section 1(2)(b) of the 1933 Act so that it covers circumstances where an infant suffocates whilst an adult is lying next to him or her on any kind of furniture or surface being used for the purpose of sleeping. It also has effect where the adult in question went to sleep under the influence of the relevant substance (drink or a prohibited drug) irrespective of the state the adult was in when they and the child first occupied the furniture or other location where they were sleeping together.
265. Section 1 of the 1933 Act as amended will read as follows (additions in italics) –
- “(1) If any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (*whether physically or otherwise*), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (*whether physically or otherwise*), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement) (*whether the suffering or injury is of a physical or psychological nature*), that person shall be guilty of a misdemeanour *an offence*, and shall be liable—
- (a) on conviction on indictment, to a fine or alternatively, or in addition thereto, to imprisonment for any term not exceeding ten years;
 - (b) on summary conviction, to a fine not exceeding the prescribed sum, or alternatively, or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
- (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf;
 - (b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed *or at any later time before the suffocation*, under the influence of drink *or a prohibited drug*, be deemed to have neglected the infant in a manner likely to cause injury to its health.
- (2A) *The reference in subsection (2)(b) to the infant being “in bed” with another (“the adult”) includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult “went to bed” is to be read accordingly).*
- (2B) *A drug is a prohibited drug for the purposes of subsection (2)(b) in relation to a person if the person’s possession of the drug immediately before taking it constituted an offence under section 5(2) of the Misuse of Drugs Act 1971.*
- (3) A person may be convicted of an offence under this section—
- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;

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(b) notwithstanding the death of the child or young person in question.”