

EXPLANATORY MEMORANDUM TO
THE SERIOUS CRIME ACT 2015 (CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2015

2015 No. 800

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations amend references in secondary legislation to the offences in sections 48 to 50 of the Sexual Offences Act 2003 (“the 2003 Act”), so as to replace the descriptors used to refer to those offences in consequence of the changes to the titles of those offences made by section 68 of the Serious Crime Act 2015 (“the 2015 Act”).

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

3.1 None.

4. Legislative Context

4.1 Section 68(1) to (6) of the 2015 Act amends the 2003 Act to remove references to “child prostitution” and “child pornography”. These terms are referred to in the titles of sections 48 (causing or inciting child prostitution or pornography), 49 (controlling a child prostitute or a child involved in pornography) and 50 (arranging or facilitating child prostitution or pornography) of the 2003 Act and in the body of those sections (and also in section 51, which contains definitions). The amendments to those sections replace these terms with references to the sexual exploitation of children, but do not alter the scope of the relevant offences. Consequential changes to other primary legislation which refer to these offences are made by Schedule 4 to the 2015 Act. The changes to the terminology used are intended to reflect a modern understanding of the position of children involved in such activities. They do not however change the behaviour to which the offences apply, which remains the recording of an indecent image of a person or the offer or provision of sexual services to another person in return for payment or a promise of payment.

5. Territorial Extent and Application

5.1 This instrument applies to 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 At Commons Committee stage of the Serious Crime Bill, the Solicitor General undertook to consider amendments tabled by Ann Coffey MP which, amongst other things, sought to amend the 2003 Act to remove anachronistic references to “child prostitution” (Official Report, 20 January, column 206).

7.2 As the Solicitor General indicated during the debate in Committee, the Government has been clear that children who are sexually exploited, whether for financial gain or other reasons, should not be referred to as prostitutes and should be recognised as victims. The Government has supported the principle behind the removal of the term “child prostitution” and has already taken action to address this issue by updating relevant guidance. Having reflected on the debate in Committee, the Government agreed that the Serious Crime Bill afforded the opportunity to make the necessary changes to primary legislation. What is now section 68(1) to (6) of the 2015 Act makes the necessary changes to the 2003 Act.

7.3 The name of the offences in sections 48 to 50 of the 2003 Act also appear in various secondary legislation. At Commons Report stage of the Serious Crime Bill, the Solicitor General indicated that the Government would use the regulation-making power in what is now section 85 of the 2015 Act to “clean up” the references to child prostitution and pornography that appear in secondary legislation (Official Report, 23 February 2015, col. 87). These regulations accordingly make consequential amendments to existing regulations and orders which refer by name to the offences in sections 48 to 50 of the 2003 Act so as to reflect the new terminology used as a result of the amendments made by section 68 of the 2015 Act. As with section 68, no substantive change to the instruments amended results from these changes.

- Consolidation

7.4 This instrument does not amend an existing instrument and no question of consolidation therefore arises.

8. Consultation outcome

8.1 As the changes made by this instrument do no more than reflect the change in terminology made by primary legislation no consultation has been carried out.

9. Guidance

9.1 The changes being made by section 68 of the 2015 Act and by these regulations will be detailed in a Home Office Circular to the police, courts and others.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no impact on business, charities, voluntary bodies or the public sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The provisions of the 2015 Act, including section 68 and, by extension, the provisions of these regulations, will be subject to the normal post-legislative review three to five years after Royal Assent.

13. Contact

Wayne Jones, Home Office (tel. [020 7035 3236, email: Waynes.Jones@homeoffice.gsi.gov.uk), can answer any queries regarding the instrument.